

13
CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 380)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 15

HARRY E. WHITE, PETITIONER,

vs.

**WM. F. STEER, COLONEL, INFANTRY, UNITED
STATES ARMY, PROVOST MARSHAL, CENTRAL
PACIFIC AREA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT**

PETITION FOR CERTIORARI FILED DECEMBER 29, 1944.

CERTIORARI GRANTED FEBRUARY 12, 1945.

No. 10774

United States
Circuit Court of Appeals
For the Ninth Circuit.

WM. F. STEER, Colonel, Infantry, United States
Army, Provost Marshal, Central Pacific Area,
Appellant,

vs.

HARRY E. WHITE,

Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 380

Upon Appeal from the District Court of the United States
for the Territory of Hawaii



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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LIEUT. COL. EUGENE V. SLATTERY, Of-
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Honolulu, T. H. [1*]

*Page numbering appearing at foot of page of original certified
Transcript of Record.

In the United States District Court for the
Territory of **Hawaii**

Habeas Corpus No. 300

In the Matter of the Application of
HARRY E. WHITE

For a Writ of Habeas Corpus

CLERK'S STATEMENT

Time of Commencing Suit:

April 14, 1944

Petition filed

Names of Original Parties:

Harry E. White, Petitioner

**C. T. Stevenson, Warden of Oahu Prison, Re-
spondent**

Dates of Filing Pleadings:

April 14, 1944

Petition

April 15, 1944

Order to Show Cause issued

April 18, 1944

Stipulation

**Answer to Petition and Order to Show
Cause**

Traverse

Writ of Habeas Corpus issued

April 20, 1944

Stipulation

Stipulation

Stipulation

Stipulation

April 21, 1944

Stipulation

Date of Filing Decision:

May 2, 1944

Decision filed [2]

Date of Filing Judgment:

May 4, 1944

Judgment filed

Proceedings in the above entitled matter were had before the Honorable J. Frank McLaughlin, District Judge.

Dates of Filing Appeal Documents:

May 3, 1944

Exceptions to Decision

May 4, 1944

Order on Taking Appeal

May 5, 1944

Notice of Appeal

May 5, 1944

Stipulation for Record

Certificate of Clerk As To The Above Statement
United States of America,
Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing to be a full, true and correct statement showing the time of commencement of the above entitled cause; the names of the original parties; the several dates when respective pleadings were filed; the date the decision was filed, the date the judgment was filed; the name of the judge presiding and the dates when appeal documents were filed in the above entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 9th day of May, A. D. 1944.

[Seal]

WM. F. THOMPSON, JR.,

Clerk, U. S. District Court,
Territory of Hawaii. [3]

[Title of District Court and Cause.]

PETITION

To the District Court of the United States for the
Territory of Hawaii:

Comes now Harry E. White, petitioner above named, and respectfully shews as follows:

I.

That petitioner is a citizen of the United States and of the Territory of Hawaii and is now and

ever since the 25th day of August, 1942, has been and still is an inmate of the Oahu Prison, penitentiary of the Territory of Hawaii situate at Honolulu, in said Territory of Hawaii, within a distance of 20 miles from this Honorable Court;

II.

That at all times herein mentioned, C. T. Stevenson has been and still is the duly appointed, qualified and acting warden of said Oahu Prison, and as such has in his custody all prisoners imprisoned therein, including petitioner;

III.

That on August 20, 1942, and for a considerable time prior thereto, petitioner was engaged in Honolulu in the business of stockbroker and investment agent with a place of business in said Honolulu; that at no time herein mentioned was petitioner a member of, or connected with, the armed forces of the United States; [5]

IV.

That while engaged in said brokerage and investment business as a civilian as aforesaid, on Thursday, August 20, 1942, petitioner was arrested and held in the Honolulu jail until Saturday, August 22, when at approximately 2:00 o'clock in the afternoon of said day he was brought by armed members of the office of Provost Marshal in said Honolulu, before one Major Samuel E. Murrell, designated as judge of the Provost Court and conducting the business of said court in the courtroom of the district magistrate of Honolulu;

V.

That petitioner was informed he was to be tried before said Major Samuel E. Murrell on a charge of embezzlement growing out of the conduct of his said brokerage and investment business, to-wit, violation of Chapter 1881, Revised Laws of Hawaii, 1935; that petitioner was never furnished with a copy of the charge or accusation against him;

VI.

That promptly on being brought before the said Major Samuel E. Murrell, petitioner entered a written plea to the jurisdiction on the ground that the Provost Court had no jurisdiction over the subject of said charge or accusation or the person of petitioner, a copy of which said plea is attached hereto and made a part hereof, marked Exhibit "A";

VII.

That said plea to the jurisdiction was forthwith overruled by said Major Samuel E. Murrell, and petitioner thereupon filed and presented in said Provost Court a written demand for trial by jury, a copy of which is hereto attached and made a part hereof, marked Exhibit "B"; that said demand for a trial by jury was [6] forthwith denied by said Major Samuel E. Murrell;

VIII.

That upon denial of a trial by jury, petitioner filed a written motion supported by affidavits for a continuance to prepare his defense in said matter,

a copy of which said motion and affidavits is hereto attached and marked Exhibit "C"; that said motion was forthwith overruled and petitioner forced to trial on said August 25, 1942, and was convicted by said Major Samuel E. Murrell on said day and immediately sentenced to imprisonment for a term of five years and mittimus issued forthwith, and ever since said 25th day of August, 1942, petitioner has been and still is confined in Oahu Prison pursuant to the sentence of the judge of said Provost Court. A copy of said mittimus is hereto attached and marked Exhibit "D";

IX.

That the trial and conviction of petitioner before said Provost Court was in violation of petitioner's rights under the Constitution, to-wit, the 5th and 6th Amendments of the Constitution, and in violation of his rights under the laws of the United States and the Territory of Hawaii, and said Provost Court was without right or lawful authority to try petitioner and said proceedings were, and are, null and void, and petitioner's imprisonment in said Oahu Prison by the said C. T. Stevenson as warden, who is imprisoning him under color of authority of the United States of America, is wrongful and in violation of petitioner's rights;

X.

That said trial and hearing before the said Major Samuel E. Murrell was unfair and petitioner was given only a semblance of a trial in said Provost Court; [7]

XI.

That petitioner is detained in said Oahu Prison under the mittimus issued by said Provost Court and is not detained in said prison under process of any lawfully constituted court of the Territory of Hawaii or the United States of America, or held otherwise than hereinabove set forth;

XII.

Petitioner alleges that on December 7, 1941, the Governor of the Territory of Hawaii, acting under authority and pursuant to the provisions of Section 67 of the Organic Act (Title 48, Section 532, U. S. Code), by proclamation declared martial law throughout the Territory, a copy of which proclamation is annexed hereto and made a part hereof and marked Exhibit "E". But petitioner alleges that said martial law ceased to exist legally in the Territory prior to said August 25, 1942, when he was tried as aforesaid before said Provost Court;

XIII.

Petitioner alleges that on August 25, 1942, when he was tried as aforesaid, the courts of the Territory and the duly appointed judges thereof were able and ready to perform their normal functions and duties, and no such imminent danger of invasion by an enemy force existed as to warrant or justify the denial to petitioner of a trial and hearing before the proper courts in and of the Territory of Hawaii;

XIV.

Petitioner further alleges that no military necessity existed for the trial of petitioner, a civilian, before a military tribunal and there is and was no justification for the denial to petitioner of the rights guaranteed him under the Constitution, particularly, to-wit, the right to have the charge against him founded on a presentment or indictment of a grand jury, the right to a trial by jury, and the right to a reasonable opportunity to prepare his [8] defense and to secure the attendance of witnesses in his favor, all of which petitioner avers were denied him;

Wherefore, petitioner prays that a writ of habeas corpus issue directed to C. T. Stevenson, warden of Oahu Prison, commanding him to produce the body of the prisoner at a time and place to be specified, then and there to receive and do what this court shall order concerning the detention and restraint of petitioner, and that petitioner may be ordered discharged from the detention and imprisonment aforesaid.

Dated: Honolulu, Hawaii, March 31, 1944.

/s/ HARRY E. WHITE

Petitioner

Territory of Hawaii,
City and County of Honolulu—ss.

Harry E. White, being first duly sworn, on oath deposes and says: That he is the petitioner in the above entitled action; that he has read the foregoing petition, knows the contents thereof and that the same are true.

/s/ HARRY E. WHITE

Subscribed and sworn to before me this 31st day of March, A. D. 1944.

[Seal] /s/ WALTER L. JOAO

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires Sept. 29, 1945. [9]

EXHIBIT "A"

In the Provost Court of Honolulu, City and County
of Honolulu, Territory of Hawaii

TERRITORY OF HAWAII

vs.

HARRY E. WHITE,

Defendant.

PLEA

Comes now the defendant above named, Harry E. White, and respectfully enters this his plea to the jurisdiction of the above entitled court, and most respectfully sets forth that this court has no jurisdiction over the subject of this action or the person of this defendant.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (sgd)

Defendant

FRED PATTERSON

Attorney for Defendant [10]

EXHIBIT "B"

[Title of Provost Court and Cause.]

DEMAND FOR JURY TRIAL

Comes now Harry E. White, defendant in the above entitled cause, and most respectfully enters this his written demand for a jury trial and respectfully requests and demands that this case be tried by a jury of the country, within the meaning of the provisions of the Constitution of the United States and the Amendments thereto.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (sgd)

Defendant

FRED PATTERSON

Attorney for Defendant [11]

EXHIBIT "C"

[Title of Provost Court and Cause.]

MOTION

Comes now the defendant Harry E. White and, without waiving his rights in the matter of the plea to the jurisdiction and his demand for a jury trial herein, further moves this court that this case be continued for the purpose of trial upon the

ground that he has not had sufficient time within which to adequately prepare his defense in this case or to properly advise with counsel, and upon the further ground that counsel of his own choice in this case is presently suffering from an ailment which requires a daily visit to his physician.

Dated: Honolulu, T. H., August 24, 1942.

HARRY E. WHITE (Sgd)

Defendant. [12]

[Title of Provost Court and Cause.]

AFFIDAVIT

Territory of Hawaii;

City and County of Honolulu—ss.

Fred Patterson, being first duly sworn on oath deposes and says: that he is the attorney of record for the above named defendant Harry E. White; that the charges in this case were filed on Saturday, the 22nd day of August, 1942, and they involve the dealings of a stockbroker with his client, and the matters contained in said charge are kept by book entries from day to day in the business of the defendant. Further, your affiant has been informed by the police that they are investigating certain other transactions involving the defendant in his business as a stockbroker in the City and County of Honolulu, Territory of Hawaii. That your affiant has practised law in the Territory of Hawaii for more than twenty years and has actively engaged

in the practice of law in the Federal Courts and the Territorial Courts and in military tribunals and that in his experience before Naval Courts, United States Courts and Territorial Courts he has never been obliged to go to trial within the short space of time which has been allowed him in this particular case; and he verily believes and says that this defendant cannot safely go to trial without a more thorough and exhaustive study of the facts surrounding the alleged offense, and the alleged crime is so peculiar in its nature and is so involved by reason of the bookkeeping and records of the defendant that he feels that the defendant should [13] be allowed further time within which to prepare for his defense in this case. Your affiant says that at the present time he is not in a position to properly advise his client on the merits of this particular case.

Further, your affiant has caused to be filed in this court a plea to the jurisdiction and a demand for a jury trial, and your affiant is at a complete loss at the present time, without further study, to definitely advise his client as to whether or not immediate proceedings should be taken in other courts to test the validity and authority of any proposed trial of the facts in this case before the above entitled court.

Further, your affiant says that he has been visiting the doctor every day for the past ten days on account of an injury which he received to his arm.

FRED PATTERSON (sgd)

Subscribed and sworn to before me this 25th day of August, 1942.

[Seal] HATTIE PANG LEE (s)

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1945. [14]

[Title of Provost Court and Cause.]

AFFIDAVIT

Territory of Hawaii,

City and County of Honolulu—ss.

Harry E. White, being first duly sworn on oath, deposes and says: that he is the defendant in the above entitled cause; that he was arrested on Thursday, the 20th day of August, 1942, at approximately 5 o'clock p.m. and was removed to the police station and held in jail until Saturday afternoon, the 22nd day of August, 1942, at approximately 2 o'clock p.m. That he has been unable in the short time since he has been released from custody to properly and adequately confer with counsel to the extent that he desires to do so, and he has been advised by his counsel that in his opinion he cannot safely go to trial at the present time without a further study of the nature and cause of the action which has been lodged against him in the above entitled court.

HARRY E. WHITE (sgd)

Subscribed and sworn to before me this 25 day
of August, 1942.

[Seal] HATTIE PANG LEE /s/
Notary Public, First Judicial Circuit, Territory of
Hawaii.—

My commission expires June 30, 1945. [15]

EXHIBIT "D"

Copy

Case No. 3594

No. 1942-3445

MITTIMUS

Provost Court

Meeting at Honolulu in the City and County of
Honolulu

Territory of Hawaii

In the Matter of

HARRY E. WHITE

a person charged with the commission of Violation
of Sec. 5840 Revised Laws of Hawaii, '35

(Embezzlement)

ORDER

Major S. E. Murrell, JAGD, Judge of the Provost
Court:

To the Provost Marshal:

Harry E. White, having been duly charged and
convicted in the Provost Court meeting at Honolulu

in the City and County of Honolulu, Territory of Hawaii, on the 25th day of August, 1942, of the offense of a true copy of which is as follows: (Set forth charge in full.)

That Harry E. White at Honolulu, City and County of Honolulu, Territory of Hawaii, on the 4th day of June A. D. 1942, being then and there intrusted with and by the consent and authority of the owner thereof, having the possession, control, custody and keeping of a certain thing of value, to wit: 500 shares of Aircraft Accessories stock, 100 shares of Vultee Aircraft stock, and 100 shares of White Motor stock, of the total value of \$3,239.64, the property of Miss Louise Rickson, the owner thereof and entitled thereto did without the consent and against the will of the said Miss Louise Rickson, fraudulently convert and dispose of the same to his own use and benefit and did then and there and thereby commit the offense of embezzlement, contrary to Section 5840 of the Revised Laws of Hawaii, 1935 and by said Court on this day duly sentenced to be imprisoned at hard labor for a term of Five Years (5 Years), ~~and to pay a fine of Dollars,~~ or to be imprisoned at hard labor until such fine be paid,

You Are Hereby Ordered to take said Harry E. White into your custody and deliver him to the Warden of Oahu Prison. Hereof Fail Not.

MAJOR S. E. MURRELL, JAGD

Judge of the Provost Court:

To the Warden of Oahu Prison:

Harry E. White having been duly convicted and sentenced in the manner and form aforesaid,

You Are Hereby Ordered to receive the said Harry E. White at Oahu Prison from the Provost Marshal and safely keep and confine the said Harry E. White in the said Oahu Prison and cause the said sentence to be fully executed.

Hereof Fail Not.

Aug. 25, 1942:—Admitted to Oahu Prison

Ser. No. M-281 FP No. 5852

By Order of the Military Governor.

(Sgd) (By) S. E. MURRELL.

Judge of the Provost Court meeting at Honolulu,
in the City and County of Honolulu, Territory
of Hawaii. [16]

EXHIBIT "E"

Territory of Hawaii

A Proclamation

Whereas, it is provided by Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, that, whenever it becomes necessary, the Governor of that territory may call upon the commander of the military forces of the United States in that territory to prevent invasion; and

Whereas, it is further provided by the said section that the governor may in case of invasion or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas

corpus and place the territory under martial law; and

Whereas, the armed forces of the Empire of Japan have this day attacked and invaded the shores of the Hawaiian Islands; and

Whereas, it has become necessary to repel such attack and invasion; and

Whereas, the public safety requires;

Now, Therefore, I, J. B. Poindexter, Governor of the Territory of Hawaii, do hereby announce that, pursuant to said section, I have called upon the Commanding General, Hawaiian Department, to prevent such invasion;

And, pursuant to the same section, I do hereby suspend the privilege of the writ of habeas corpus until further notice;

And, pursuant to the same section, I do hereby place the said territory under martial law;

And, I do hereby authorize and request the Commanding General, Hawaiian Department, during the present [17] emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor;

And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;

And I do require all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the Commanding General, Hawaiian Department, or his subordinates, may issue during the present emergency.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Territory of Hawaii to be affixed.

Done at Honolulu, Territory of Hawaii, this 7th day of December, 1941.

[Seal] (s) J. B. POINDEXTER

Governor of the Territory of
Hawaii.

By the Governor:

CHAS. M. HITE

Secretary of Hawaii.

A true and correct copy:

/s/ JAMES F. HANLEY

James F. Hanley,

Major, J.A.G.D.

3:30 P.M.

NOTICE

To G. D. Crozier, United States Attorney:

Please take notice that the foregoing application of Harry E. White for a writ of habeas corpus will be heard before the Honorable J. Frank McLaugh-

lin, United States District Judge in his courtroom
at 9 o'clock A.M. on April 15, 1944.

FRED PATTERSON and

E. J. BOTTS,

Attorneys for Petitioner

Per S/M.M.

[Endorsed]: Filed April 14, 1944. [18]

**In the District Court of the United States in and for
the District and Territory of Hawaii**

No. 300

**In the Matter of the Application
of**

HARRY E. WHITE,

for a writ of habeas corpus

ORDER TO SHOW CAUSE

To C. T. Stevenson, Warden, Oahu Prison, Honolulu, City and County of Honolulu, Territory of Hawaii:

The petition of Harry E. White having been duly filed herein praying that a writ of habeas corpus issue in the above entitled matter,

It Is Hereby Ordered that you, C. T. Stevenson, warden of Oahu Prison, in said Honolulu, Territory of Hawaii, be and appear before the undersigned judge of the above entitled court on the 20th day of April, 1944, at the hour of 10:00 o'clock in the fore-

noon of said day to show cause, if any you have, why said writ should ~~not~~ issue.

The United States Marshal is hereby ordered and directed to forthwith serve a copy of this Order upon said C. T. Stevenson, Warden of Oahu Prison, in Honolulu, Territory of Hawaii, together with a copy of the petition aforesaid.

Dated: Honolulu, T. H., April 15, 1944.

/s/ J. FRANK McLAUGHLIN

Judge of the Above Entitled
Court [20]

Office of the United States Marshal
District of Hawaii

No. 300

In the Matter of the Application
of

HARRY E. WHITE,

for a writ of habeas corpus

UNITED STATES MARSHAL'S RETURN

Received the within Order to Show Cause this 15th day of April, A.D. 1944, and the same is returned duly executed this 15th day of April, A.D. 1944, by exhibiting the original Order to Show Cause to C. T. Stevenson, Warden of Oahu Prison, and by handing to and leaving with him a certified copy of the Order to Show Cause at the Sacred

Hearts Hospital, Bates & Nuuanu Streets, Honolulu,
T.H. at 12:40 p.m.

Dated at Honolulu, T.H. this 15th day of April,
A.D. 1944.

OTTO F. HEINE,

U. S. Marshal, District of
Hawaii

By (s) EMMANUEL U. MOSES, JR.

Deputy.

Marshal's Civil Docket 7-418

No. 2463

Court No. H.C. 300

Fees \$2.18

Expenses

Total 2.18

[Endorsed]: Filed April 15, 1944. [21]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between counsel herein as follows:

1. That Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, has been and is the duly appointed, qualified and acting custodian of petitioner.

2. That the said Wm. F. Steer, Colonel, United States Army, be and he is hereby substituted as Respondent in the present cause in the place of C. T. Stevenson, Warden of Oahu Prison.

3. That Paragraph II of the Petition herein be amended to read as follows:

"That at all times herein mentioned Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, has been and still is the duly appointed, qualified and acting custodian of Petitioner."

4. That the last four lines of Paragraph IX of the Petition, be stricken out and the following substituted therefor:

"—petitioner's imprisonment in said Oahu Prison by the said Wm. F. Steer, Colonel, United States Army, who is imprisoning him under color of authority of the United States of America is wrongful and in violation of petitioner's rights."

5. That the prayer of said Petition shall read as follows:

"Wherefore, petitioner prays that a writ of habeas corpus issue directed to Wm. F. Steer, Colonel, United States Army, Provost Marshal, Central Pacific Area, commanding him to [23] produce the body of the petitioner at a time and place to be specified, then and there to receive and do what this court shall order concerning the detention and restraint of petitioner, and that petitioner may be ordered discharged from the detention and imprisonment aforesaid."

Wm. F. Steer vs.

Dated this 18th day of April, 1944, Honolulu, T.H.

FRED PATTERSON

By (s) **E. J. BOTTS**

(s) **E. J. BOTTS**

Attorneys for Petitioner

(s) **C. Nils Tavares**

Attorneys for Petitioner

of Hawaii,

Attorney for C. T. Stevenson

(s) **G. D. CROZIER**

United States Attorney

District of Hawaii

(s) **EDWARD J. ENNIS**

Assistant to the Attorney

General/

Attorneys for Wm. F. Steer,
Col.

It is so ordered.

Dated this 18th day of April, 1944, Honolulu, T.H.

J. FRANK McLAUGHLIN

Judge of the above entitled
Court.

[Endorsed]: Filed April 18, 1944. [24]

[Title of District Court and Cause.]

ANSWER TO PETITION AND ORDER TO
SHOW CAUSE

To the Honorable J. Frank McLaughlin, Judge of
the United States District Court In and For the
Territory of Hawaii:

Comes now William F. Steer, Colonel, Infantry,
Provost Marshal, United States Army Forces, Central
Pacific Area, respondent herein, and for answer
to the petition and order to show cause respectfully
shows:

1

Respondent admits the allegations of Paragraph I.

2

Respondent admits the allegations of Paragraph II.

3

Respondent admits the allegations of Paragraph III.

4

Respondent admits the allegations of Paragraph IV but avers that at the time of his arrest petitioner was advised of the nature and cause of the accusation against him.

5

Respondent admits the allegations of Paragraph V but avers that in lieu of furnishing petitioner with a copy of the charge or accusation against him petitioner was orally advised of the nature and cause of said accusation. [25]

6

Respondent admits the allegations of Paragraph VI.

7

Respondent admits the allegations of Paragraph VII.

8

Respondent admits the allegations of Paragraph VIII.

9

Respondent denies the allegations of Paragraph IX.

10

Respondent denies the allegations of Paragraph X.

11

Respondent admits that petitioner is detained in Oahu Prison under a mittimus issued by the Provost Court. (Petitioner's Exhibit D) The remaining allegations of this paragraph are denied.

12

Respondent admits that the Governor of the Territory of December 7, 1941, acting pursuant to the provisions of Section 67 of the Organic Act by

a proclamation declared martial law throughout the Territory. (Petitioner's Exhibit E) Respondent denies that martial law ceased to exist legally in the Territory prior to August 25, 1942.

13

Respondent has no knowledge as to whether on August 25, 1942, the date of petitioner's trial, the courts of the Territory and the judges were able and ready to perform their normal [26] functions and duties. Respondent denies that no such imminent danger of invasion by an enemy force existed on that date as to warrant or justify the denial to petitioner of a trial and hearing before the courts of the said Territory.

14

Respondent denies that no military necessity existed for the trial of petitioner before a military tribunal, that petitioner was deprived of any rights guaranteed to him under the Constitution, that he had any right to have the charge against him founded on a presentment or indictment of a grand jury, that he had any right to a trial by jury, and avers that he was accorded a reasonable opportunity to prepare his defense and to secure the attendance of witnesses in his favor.

Further Answering respondent shows:

15

That on December 7, 1941, the then Governor of the Territory, acting under Section 67 of the Organic Act, issued the proclamation attached to the

petition as Exhibit E; that under the provisions of said Organic Act the President of the United States, in response to a communication from the said Governor and acting under Section 67 of the Organic Act, on December 9, 1941, advised the said Governor in response to his telegram of December 7, 1941, that his action in suspending the writ of habeas corpus and placing the Territory under martial law in accordance with Section 67 of the Organic Act (48 U.S.C. 532) had his approval. The action of the then Governor in declaring martial law and suspending the [27] privilege of the writ of habeas corpus has never been revoked nor has the action of the President in approving these actions by the Governor been revoked. Respondent avers the privilege of the writ of habeas corpus is by the said action of the Governor and of the President, and by reason of Paragraph 1.01, General Orders No. 2, Office of the Military Governor, 10 March 1943, suspended and this court has no jurisdiction to grant the relief sought by petitioner.

16

On December 7, 1941, the Governor of the Territory called upon The Commanding General of the Hawaiian Department, Lieutenant General Walter C. Short, to prevent invasion and to exercise certain other powers, functions, and duties. There is attached hereto and made a part hereof as respondent's Exhibit A proclamation pursuant thereto made by The Commanding General, Hawaiian Department, dated 7 December 1941.

17

On December 17, 1941, Lieutenant General Walter C. Short, Commanding General of the Hawaiian Department, relinquished command and was succeeded on the same date by Lieutenant General Delos C. Emmons as Commanding General of the Hawaiian Department, who occupied that position August 25, 1942.

18

Each of the above-named officers exercised his powers, functions, and duties under the proclamation of the Governor of Hawaii dated December 7, 1941, (Petitioner's Exhibit E) under the name and style of Military Governor of the Territory of Hawaii. [28]

19

The proclamation of the Governor of Hawaii dated December 7, 1941, provided as follows:

"And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;"

That pursuant thereto The Commanding General, acting under the name and style of Military Governor on December 7, 1941, promulgated General Or-

ders No. 4 vesting in Provost Courts power to try offenses which constituted violations of the laws of the Territory of Hawaii.

20

By General Orders No. 122, dated 1 July 1942, Major Samuel E. Murrell was appointed Provost Court and in that capacity acted as Provost Court in the trial, sentencing, and commitment of petitioner described by the petition herein.

21

That on December 7, 1941, the Territory of Hawaii was invaded and was in imminent danger of invasion within the meaning of Section 67 of the Organic Act and that the public safety required the declaration of martial law and the suspension of the privilege of the writ of habeas corpus; that at the time of the commission of the offense on or about June 4, 1942, and the arrest and trial of petitioner, August 20 through August 25, 1942, the Territory of Hawaii had recently been invaded and was still in imminent danger thereof, and that the public safety required the continuation of [29] the state of martial law and that martial law still continued in existence at that time and the privilege of the writ of habeas corpus remained suspended.

22

That from December 7, 1941, up to the present time the Territory of Hawaii was and now is a theater of operations, part of a combat zone, in an active theater of war.

23

That by reason of the aforesaid, the said Provost Court, Major Samuel E. Murrell, had jurisdiction of the person of petitioner and the accusation against him, and that the sentence adjudged was within the limit of punishment permissible under General Orders No. 4, December 7, 1941, aforesaid. That this court is without jurisdiction to inquire into the conduct of the said trial by the said Provost Court, Major Samuel E. Murrell, and is without power to determine whether said Provost Court should or should not have granted a continuance to petitioner. That under the provisions of General Orders No. 4, December 7, 1941, aforesaid, and applicable law, there is no right on the part of petitioner to have a charge triable by a Provost Court founded upon a presentment or indictment of a grand jury, nor does petitioner possess in such case the right to a trial by a jury, as alleged in Paragraph IV of his petition. Respondent shows that petitioner was represented by counsel of his own choice at said trial.

24

That under conditions existing from December 7, 1941, up to and including August 20 through August 25, 1942, military [30] necessity required the trial of civilians, including petitioner, by Provost Court, under the provisions of General Orders No. 4, December 7, 1941, and that such courts were established by The Commanding General of the Hawaiian Department, acting in the name and style of Military Governor, in good faith and in the

honest belief that in his military judgment, military necessity required their existence and operation. Respondent shows that the offense for which petitioner was tried is not an offense cognizable in the District Court of the United States for the District of Hawaii; that in respect of the prosecution of the said offense by the Territorial courts, the then Governor of the Territory by his proclamation dated December 7, 1941, quoted in Paragraph 19 of the present answer, requested during the present emergency and until the danger of invasion is removed, that The Commanding General, Hawaiian Department, and his subordinates exercise the powers normally exercised by judicial officers and employees of this Territory; that pursuant thereto the Territorial courts ceased to exercise their jurisdiction except as and when authorized so to do by The Commanding General, Hawaiian Department, acting in the name and style of Military Governor; that in respect of criminal cases no recession of the power to try criminal cases was made to the Territorial courts up to and including the date of trial and sentence of petitioner. •

25

Respondent avers that the Provost Court which tried and sentenced petitioner had jurisdiction of the person and the offense and the sentence herein was within the power of the court to adjudge and that petitioner is now legally held by the respondent under the mittimus herein. [31]

Whereupon respondent moves that the rule herein be discharged and the petition dismissed.

Dated at Honolulu, T. H., this day of April, 1944.

(s) WILLIAM F. STEER

Colonel, Infantry,
Provost Marshal,
United States Army Forces,
Central Pacific Area,
Respondent

(s) G. D. CROZIER

United States Attorney
District of Hawaii

(s) EDWARD J. ENNIS

Special Assistant to the At-
torney General

(s) EDWARD TOWSE

Assistant United States At-
torney District of Hawaii
Attorneys for Respondent

(s) WM. J. HUGHES, JR.

Lieut. Colonel, J.A.G.D.

(s) EUGENE V. SLATTERY

Lieut. Colonel, J.A.G.D.
Of Counsel

[Endorsed]: Filed Apr. 18, 1944. [32]

Territory of Hawaii

City and County of Honolulu—ss.

William F. Steer, Colonel, Infantry, being duly sworn on oath deposes and says:

That he is the Provost Marshal, United States Army Forces, Central Pacific Area, and in that capacity made and signed the foregoing answer to Petition and Order to Show Cause; that he has read the same, knows the contents thereof, and that all allegations of fact therein are true excepting such as are made upon information and belief and as to those, he believes them to be true to the best of his information, knowledge and belief.

(s) WILLIAM F. STEER

Colonel, Infantry,
Provost Marshal,
United States Army Forces,
Central Pacific Area,
Respondent

Subscribed and sworn to before me this 18th day of April, 1944.

[Seal] (s) N. F. JOHNSON

Notary Public, First Judicial Circuit, Territory of Hawaii

My commission expires November 28, 1946

N. F. J. [33]

EXHIBIT A

Proclamation

United States Army

Headquarters Hawaiian Department

Fort Shafter, 7 December 1941

To the People of Hawaii:

The military and naval forces of the Empire of Japan have attacked and attempted to invade these islands.

Pursuant to section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, the Governor of Hawaii has called upon me, as commander of the military forces of the United States in Hawaii, to prevent such invasion; has suspended the privilege of the writ of habeas corpus; has placed the Territory under martial law; has authorized and requested me and my subordinates to exercise the powers normally exercised by the governor and by subordinate civil officers; and has required all persons within the Territory to obey such proclamations, orders, and regulations as I may issue during the present emergency.

I announce to the people of Hawaii, that, in compliance with the above requests of the Governor of Hawaii, I have this day assumed the position of military governor of Hawaii, and have taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense.

All persons within the Territory of Hawaii,

whether residents thereof or not, whether citizens of the United States or not, of no matter what race or nationality, are warned that by reason of their presence here they owe during their stay at least a temporary duty of obedience to the United States, and that they are bound to refrain from giving, by word or deed, any aid or comfort to the enemies of the United States. Any violation of this duty is treason, and will be punished by the severest penalties.

The troops under my command, in putting down any disorder or rebellion and in preventing any aid to the invader, will act with such firmness and vigor and will use such arms as the accomplishment of their task may require.

The imminence of attack by the enemy and the possibility of invasion make necessary a stricter control of your actions than would be necessary or proper at other times. I shall therefore shortly publish ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects.

In order to assist in repelling the threatened invasion of our island home, good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders [34] will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function.

Pending further instructions from this headquarters the Hawaii Defense Act and the Proclamation of the Governor of Hawaii heretofore is-

sued thereunder shall continue in full force and effect.

(Signed) WALTER C. SHORT,
Lieutenant General, U. S.
Army, Commanding.
Military Governor of Hawaii.

A True Copy:

JAMES F. HANLEY,
Major, J.A.G.D.

[Title of District Court and Cause.]

TRAVERSE

Come now Harry E. White, petitioner herein, and for Traverse to the return to the order to show cause issued in the above entitled matter, admits, shows and denies as follows:

I.

Petitioner, by reference, makes Paragraph I to XIV, inclusive, of his petition, with exhibits, a part of this traverse as fully as if the same were set out in words and figures;

II.

In answer to Paragraph 15, petitioner admits the first sentence or part of said paragraph; but denies the averment of said paragraph that this court has no jurisdiction to grant the relief prayed for, and denies that martial law remains in force here; admits that no formal proclamation revok-

ing the proclamation of December 7, 1941, was made by the Governor prior to August 25, 1942, but in this connection alleges that martial law legally expired in the Territory of Hawaii on a date substantially prior to said August 25, 1942, and the privilege of the writ of habeas corpus was fully restored as a matter of law prior to said August 25, 1942, and said privilege still continues in favor of all civilians in the Territory unlawfully deprived of their liberty. Petitioner therefore denies the last sentence of said Paragraph 15;

[36]

III.

Petitioner admits the averments of Paragraph 16;

IV.

Petitioner admits the averments of Paragraph 17;

V.

Petitioner admits the allegation in Paragraph 18 that the commanding officers referred to in Paragraph 17 assumed the title of Military Governor, but petitioner alleges that such office and title was assumed without lawful right or authority;

VI.

Admits the first paragraph of Paragraph 19, but has not sufficient knowledge to admit the second paragraph thereof and leaves respondent to his proof;

VII.

Admits the allegation of Paragraph 20;

VIII.

Petitioner denies the Territory was invaded on December 7, 1941, but admits that on said December 7, 1941, the Territory was in imminent danger of invasion within the meaning of Section 67 of the Organic Act; but petitioner denies the other averments of said paragraph, and further answering said paragraph, petitioner avers that long prior to August 25, 1942, the Territory was secure against invasion; that business was being conducted in the Territory normally, that the courts and judges thereof were ready and willing to perform their assigned functions, and that no justifiable reason existed for the continuance of martial law in the Territory or the denial of the privilege of the writ of habeas corpus; petitioner denies that martial law still continues legally in the Territory and denies that the privilege of the writ of habeas corpus remains suspended; [37]

IX.

Petitioner has not sufficient knowledge to admit or deny the averment of Paragraph 22 and leaves respondent to his proof;

X.

Petitioner denies the averments of Paragraph 23;

XI.

Petitioner denies the averments of Paragraph 24, insofar as the same alleges that military necessity required the trial of civilians, including peti-

tioner, before Provost Courts. Petitioner denies that said Provost Courts had right or authority to try any civilians, but irrespective of whether they had right to try any civilians, petitioner avers they had no right to try him for an indictable offense against the laws of the Territory, to-wit, embezzlement, the same being a crime involving moral turpitude. And further answering said paragraph, petitioner alleges that the proclamation of December 7, 1941, was for the immediate emergency, and that such emergency ceased to exist long prior to August 25, 1942, and as a matter of law the military tribunal had no jurisdiction to try, adjudge, convict and imprison petitioner for violation of a territorial law which was not remotely related to the military welfare or safety of the Territory:

XII.

In answer to Paragraph 25, petitioner denies that said Provost Court which tried and sentenced petitioner had jurisdiction either over the person of petitioner or the offense for which he was charged, [38] and petitioner alleges he is now illegally held and confined.

Wherefore, petitioner prays that a writ of habeas corpus may be issued herein and that the same may be made final and absolute, and that petitioner may be discharged from custody and go hence without day.

(s) HARRY E. WHITE

Petitioner

Territory of Hawaii
City and County of Honolulu—ss.

Harry E. White, being first duly sworn, on oath deposes and says: that he is the petitioner above named; that he has read the foregoing Traverse, knows the contents thereof, and that the same are true to the best of his knowledge, information and belief.

(s) HARRY E. WHITE

Subscribed and sworn to before me this 18th day of April, A. D. 1944.

(s) THOS. P. CUMMINS

Deputy Clerk, United States
District Court, Territory of
Hawaii.

[Endorsed]: Filed April 18, 1944. [39]

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS

The President of the United States of America.

To: Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, Custodian of Petitioner:

We command you that the body of Harry E. White by you detained and imprisoned, as is charged, you have before the District Court of the United States in and for the District of Hawaii, on the 18th day of April 1944, at the hour of 3:15 o'clock in the afternoon of said day, together with

the cause of the detention of the said Harry E. White, to then and there undergo and receive in this behalf, and have you then and there this writ with your doings thereon, and you, Otto Heine, Esquire, United State Marshal in and for the District of Hawaii, or your deputy, are hereby directed and commanded to forthwith serve this writ.

Witness the Honorable J. Frank McLaughlin, Judge of the United States District Court in and for the District of Hawaii this 18th day of April, A. D., 1944.

[Seal] (s) WM. F. THOMPSON, JR.

Clerk, United States District Court in and for the District of Hawaii

Lét the foregoing writ of Habeas Corpus issue.

(s) J. FRANK McLAUGHLIN

Judge, United States District Court, in and for the District of Hawaii [41]

United States Marshal's Office
Marshal's Return

Upon issnance of the writ of habeas corpus herein on April 18, 1944, counsel for respondent, Colonel Wm. F. Steer accepted service of the writ for the respondent and forthwith produced the petitioner at the hearing of the proceedings in Judge J. Frank McLaughlin's Chambers and stipulated on the record that service on respondent's counsel be deemed to be service on the respondent personally and thereafter, on April 19, 1944, at 9:55

a. m. a certified copy of the writ was served personally on the respondent, Colonel Wm. F. Steer.

(s) OTTO F. HEINE

United States Marshal, District of Hawaii

Dated at Honolulu, T. H., this 19th day of April, A. D., 1944.

[Endorsed]: Filed Apr 19 1944 [42]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between Counsel for Petitioner and Counsel for Respondent that the following documents submitted in evidence in the case of ex parte Lloyd C. Duncan, Habeas Corpus No. 298, U.S.D.C. for the Territory of Hawaii, may be received in evidence without objection:

Petitioner's Exhibit "A", "Admiral Halsey's Views," quoted in Army and Navy Register (Pet. Exhibit "B", Duncan Case);

Petitioner's Exhibit "B", Excerpt from Article by General Henry H. Arnold, Commanding General, Army Air Forces, quoted in Army and Navy Register (Petitioner's Exhibit "C", Duncan case);

Petitioner's Exhibit "C", "Americans of Japanese Descent," Army and Navy Register (Petitioner's Exhibit "D", Duncan Case);

Petitioner's Exhibit "D", "Ready for Jap Fleet" statement by Admiral Halsey, Army and Navy Journal (Petitioner's Exhibit "F", Duncan Case);

Petitioner's Exhibit "E", "Marshall Islands Campaign," Statement by Major General Willis H. Hale, Commanding General, 7th Air Force, Army and Navy Register, March 4, 1944 (Petitioner's Exhibit "G", Duncan Case).

It Is Hereby Stipulated that testimony adduced at the trial of Lloyd C. Duncan, Habeas Corpus No. 298, in this Court by witnesses Albert M. Cristy, Judge of the First Circuit Court, Territory of Hawaii, Judge Harry Steiner, Judge of the Municipal Court, Territory of Hawaii, Gus Sproat, Clerk of the Supreme Court of Hawaii may be received in evidence without objection.

It Is Stipulated that the following exhibits submitted in evidence in the trial of Lloyd C. Duncan, Habeas Corpus No. 298, this Court, be received in evidence without objection:

.. Petitioner's Exhibit "F" Statistics as to business of Supreme Court and Circuit Courts, years 1939 to 1943 inclusive (Petitioner's Exhibit "H", Duncan Case); [44]

Petitioner's Exhibit "G-1", "G-2", "G-3", Correspondence with Mr. Charles F. Loomis by Galon N. Fisher, W. A. Gabrielson, Chief of Police, and Col. Kendall G. Fielder, Assistant Chief of Staff, G-2 Hawaiian Department (Petitioner's Exhibit "J-1", "J-2", "J-3", Duncan Case);

Petitioner's Exhibit "H", letter dated April 4, 1944 from Ralph C. Scott, Vice President and Manager, Bishop Insurance Agency, Ltd., giving War Risk Insurance rates, October 5, 1941 to December 31, 1943, inclusive (Petitioner's Exhibit "K", Duncan Case);

Petitioner's Exhibit "I", Comparative Statement of Gross Income and Consumption Tax Collections, etc., Territory of Hawaii, 1941 to 1943 (Petitioner's Exhibit "L", Duncan Case);

Petitioner's Exhibit "J-1", to "J-6", inclusive, newspaper clippings containing statements by General Emmons, General Richardson, Admiral Nimitz, Secretary of Navy Knox (Petitioner's Exhibit "N-1 to "N-6", inclusive, Duncan case);

Petitioner's Exhibit "K", copy of Petition to Secretary of State signed by American Citizens of Japanese Ancestry (Petitioner's Exhibit "Q", Duncan Case);

Petitioner's Exhibit "L", Copy of General Orders No. 31, 25 August 1943 (Petitioner's Exhibit "R", Duncan Case);

Petitioner's Exhibit "M", pamphlet "The Volunteer" (Petitioner's Exhibit "S", Duncan Case);

Petitioner's Exhibit "N-1" to "N-4", inclusive, Newspaper clippings of statements by Admiral Nimitz, General Emmons, and others (Petitioner's Exhibit "T-1" to "T-4", Duncan Case);

Petitioner's Exhibit "O", Memorandum for Colonel Morrison giving data as to Japanese in the United States Army, casualties thereof, number of Japanese evacuated from Hawaii, December 7, 1941 to April 10, 1944, number interned for same period, number interned during first quarter of 1944, and total number of internment cases, with other data (Petitioner's Exhibit "U", Duncan Case);

It Is Stipulated that the Court may take judicial notice of the Hawaii Defense Act, and of Rules 1 to 98 prescribed pursuant thereto.

It Is Stipulated that the testimony of Honorable Ingram M. Stainback, Governor of Hawaii, submitted in ex parte Duncan, Habeas Corpus No. 298, this Court, may be received in evidence without objection.

It Is Stipulated that the following exhibits may be received in evidence on behalf of Respondent:

Respondent's Exhibit "1", Newspaper clipping from Honolulu Advertiser of April 6, 1944 containing statement of General Emmons (Respondent's Exhibit "4", Duncan case);

Respondent's Exhibit "2-1" to "2-4", inclusive, draft of correspondence between Secretary of War, Attorney General, and Secretary of the Interior, with the President, containing draft of Proclamation, these drafts initialed by various officials. Also [45] carbon copy of letter from the President to the Secretary of War dated February 1, 1943 in answer to letter to President signed by Secretary of War, Attorney General and Secretary of Interior dated January 18, 1943 enclosing draft of Proclamation. Also letter from the President to the Secretary of War dated February 1, 1943, and agreed draft of letter initialed by various officials to General Emmons to be signed by the Governor of Hawaii. All the above are photostats (Respondent's Exhibits "5-1" to "5-4", inclusive, Duncan Case);

Respondent's Exhibit "3", Summary of Cases in Provost Court for month of February, 1944 (Respondent's Exhibit "6", Duncan Case);

Respondent's Exhibit "4", Population Estimates

of Hawaii by Board of Health, and related papers (Respondent's Exhibit "7", Duncan Case);

Respondent's Exhibit "5", Births of Japanese and number reported to Japanese Consulate, 1915 to 1941 (Respondent's Exhibit "8", Duncan Case);

Respondent's Exhibit "6", Estimate of Dual Citizens of Japanese Ancestry in Hawaii (Respondent's Exhibit "9", Duncan Case);

Respondent's Exhibit "7", Nationality Law, Translation (Respondent's Exhibit "10", Duncan Case);

Respondent's Exhibit "8-a" and "8-b", Statement of General Richardson to Eugene Burns, November 13, 1943, and Statement as published in "Washington Star" (Respondent's Exhibit "11-a" and "11-b", Duncan Case);

Respondent's Exhibit "9", Tactical and Strategic Map of Hawaiian Islands and Pacific Ocean Area showing enemy airplane radius and possible mode of attack (Respondent's Exhibit "12", Duncan Case);

Respondent's Exhibit "10", General Orders 38, Rescission of General Orders 31 (Respondent's Exhibit "13", Duncan Case);

Respondent's Exhibit "11", Navy's Report on Pearl Harbor, December 5, 1942, and attached photographs of Pearl Harbor, December 7, 1941 (Respondent's Exhibit "14", Duncan Case);

Respondent's Exhibit "12", Memorandum dated 10 April 1944 giving data as to number of Japanese, Aliens, Dual Citizens, and Citizens interned, released, and relocated, 7 December 1941 to 10 April 1944 (Respondent's Exhibit "15", Duncan Case);

It Is Hereby Stipulated that the testimony of Captain Frank Wickhem, J.A.C.D, Lt. General Robert C. Richardson, Jr., Admiral Chester W. Nimitz, and Mr. R. Murakami adduced at the trial in ex parte Duncan, Habeas Corpus No. 298, this Court, may be received in evidence without objection.

/s/ FRED PATTERSON

/s/ E. J. BETTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

/s/ EDWARD J. ENNIS

Special Assistant to the

Attorney General

Attorneys for Respondent

[Endorsed]: Filed April 20, 1944. [46]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, that Ingram M. Stainback, if called as a witness, would testify:

I.

That he is Governor of the Territory of Hawaii and has occupied said office continuously since August 24, 1942;

II.

That during the period covered by petitioner's arrest and trial (August 20-25, 1942), the civil population in Honolulu and the Territory of Hawaii was orderly and in his opinion, invasion of the Territory by an enemy force was not imminent, and that the trial of civilians before military tribunals or provost courts for offenses against the laws of the Territory was unnecessary and not justified by the conditions which existed in the Territory at said time;

III.

That while the Governor is of the opinion that the declaration of martial law on December 7, 1941, was warranted by the affairs of that day and immediate period, the need and justification for martial law expired and terminated within a period of three months from the said 7th day of December, 1941.

IV.

That upon his assumption of the duties of Governor of the Territory, August 24, 1942, a search was made of the records and files of his office in an effort to discover whether the Proclamation of December 7, 1941 by Governor Poindexter and the Proclamation [48] of December 7, 1941 by General Short were submitted to or approved by the President. The search failed to disclose such submission to or approval by the President of either of the said Proclamations and after official inquiry and investigation by Governor Stainback in Washington he concluded that said Proclamations had never

been submitted to the President or Secretary of Interior for approval. The records of the office of Governor do, however, disclose an exchange of telegrams between the President and the Governor relative to the declaration of Martial Law December 7, 1941, copy of which telegrams are attached hereto and made a part hereof.

It is Stipulated that the foregoing may be considered by the Court as testimony duly given by the said Ingram M. Stainback called as a witness in behalf of the petitioner in the above entitled matter.

Dated this 20th day of April, 1944, Honolulu,
T. H.

/s/ C. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Special Assistant to the Attorney General

Attorneys for Wm. F. Steer,
Col.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

It is so ordered.

Dated this 20 day of April, 1944, Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court. [49]

Harry E. White

51

S. C. Form No. 11

Signal Corps, United States Army

Received at

War Department Message Center,
Room 3441, Munitions Building,
Washington, D. C.

P49WEJ PX 42WD Priority

Ft. Shafter 516P Dec 7 1941

The President The White House

Washington D C

I, Have Today Declared Martial Law Throughout
The Territory Of Hawaii And Have Suspended The
Privilege Of The Writ Of Habeas Corpus Period
Your Attention Is Called To Section Sixty Seven Of
The Hawaiian Organic Act For Your Decision On
My Action

POINDEXTER

1106PM Dec 7th 1941 [50]

Standard Form No. 14A

Approved By The President

March 10, 1926

From

The White House

Washington

December 9, 1941

Telegram

Official Business—Government Rates

48 U S Govt Cable

Honorable Joseph B. Poindexter,

Governor, Territory of Hawaii.

Honolulu, Hawaii.

Your Telegram Of December Seventh Received And
Your Action In Suspending The Writ Of Habeas
Corpus And Placing The Territory Of Hawaii Un-
der Martial Law In Accordance With U.S.C., Title
48, Section 532 Has My Approval.

FRANKLIN D. ROOSEVELT

[Endorsed]: Filed April 20, 1944. [51]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the par-
ties hereto that Samuel B. Kemp, if called as a
witness, will testify as follows:

I.

That he is Chief Justice of the Supreme Court and has occupied said office continuously since June 20, 1941;

II.

That during the period covered by petitioner's arrest and trial, to-wit, August 20 to August 25, 1942, the courts of the Territory of Hawaii were ready, willing and prepared to perform their normal judicial functions;

III.

That neither the Commanding General, Hawaiian Division, U. S. Army, nor any of his subordinates ever consulted the Chief Justice with respect to reopening the courts for the trial of persons charged with criminal offenses under the laws of the Territory;

IV.

That after the month of April, 1942, the Chief Justice knows of no sound reason for denial of trial by jury to civilians charged with criminal offense under the laws of the Territory. The only reason assigned, in his discussion with military authorities regarding the reopening of the courts, was that jury trials might require the attendance of some persons engaged in war work and [53] consequently, result in occasional absences from employment.

It Is Stipulated that the foregoing (Paragraphs I, II, III, and IV) may be considered by the Court as testimony duly given by the said Samuel B.

Kemp as a witness called in behalf of the petitioner in the above entitled matter.

Dated this 20th day of April, 1944, Honolulu, T. H.

/s/ G. D. CROZIER

United States Attorney
District of Hawaii

/s/ EDWARD J. ENNIS

Assistant to the Attorney
General

Attorneys for Wm. F. Steers,
Col.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

It is so ordered.

Dated this 20th day of April, 1944, Honolulu, T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court

[Endorsed]: Filed April 20, 1944. [54]

[Title of District Court and Cause.]

STIPULATION

It is Hereby Stipulated by and between the parties hereto, that:

I.

A file of communiques issued from the Office of

the Commander-in-Chief, Pacific Area, shall be admitted in evidence as Exhibit A-1 for petitioner;

II.

That Lieut. General Robert C. Richardson, Jr., and Admiral Chester W. Nimitz, if called as witnesses would testify that their testimony given in Ex parte Duncan was, in their opinion, equally applicable to the period of August 20-25, 1942.

Dated this 20 day of April, 1944, Honolulu, T. H.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Special Assistant to the
Attorney General

Attorneys for Wm. F. Steers,
Col.

It is so ordered.

Dated this 20th day of April, 1944, Honolulu,
T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court

[Endorsed]: Filed April 20, 1944. [55]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, that:

I.

A file of communiques issued from the Office of the Commander-in-Chief, Pacific Area, shall be admitted in evidence as Exhibit A-1 for petitioner;

II.

That Lieut. General Robert C. Richardson, Jr., who assumed command in this Territory on June 1, 1943, and Admiral Chester W. Nimitz, who assumed command in this Territory of December 18, 1941, if called as witnesses, would testify that their testimony given in Ex parte Duncan was, in their opinion, equally applicable to the period of August 20-25, 1942, and to the offense involved herein.

Dated this day of April, 1944, Honolulu, T. H.

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner

/s/ G. D. CROZIER

United States Attorney

District of Hawaii

/s/ EDWARD J. ENNIS

Assistant to the Attorney

General

Attorneys for Wm. F. Steers,

Col.

It is so ordered.

Dated this 21st day of April, 1944, Honolulu,
T. H.

/s/ J. FRANK McLAUGHLIN

Judge of the above entitled
Court [56]

[Title of District Court and Cause.]

DECISION

In this habeas corpus proceeding the pertinent facts are as follows:

I.

HISTORICAL FACTS

(a) On the afternoon of December 7, 1941, the Governor of Hawaii, J. B. Poindexter, invoked Section 67 of the Hawaiian Organic Act¹ and by proclamation placed the Territory under martial law; suspended the privilege of the writ of habeas corpus; and delegated to the Commanding General of the Hawaiian Department of the United States Army not only all of his powers as Governor but also all of the "powers normally exercised by judicial officers . . . of this territory . . ." "... during the present emergency and until the danger of invasion is removed"²

(b) By radio the Governor of Hawaii on December 7, 1941, notified the President of the United

¹31 Stat. 141 (1900); 48 U.S.C. 532

²Appendix I

States simply [58] that he had placed the Territory under martial law and suspended the writ.³ The President's approval was requested and it was granted by radio on December 8, 1941.⁴ Not until 1943 was the text of the Governor's December 7 proclamation furnished Washington officials, and it is still doubtful if it has yet been seen by the President. (See Respondent's Exhibits 2-1, 2-2, 2-3, 2-4)

(c) On December 7, 1941, the Commanding General, Walter C. Short, referring specifically to Governor Poindexter's proclamation of the same date, himself issued a proclamation⁵ notifying the people of Hawaii that he had assumed the position of "Military Governor of Hawaii" and had taken over the government of Hawaii.

(d) Likewise on December 7 the self-styled Military Governor of Hawaii issued General Orders No. 4 by which he set up a system of military courts to try civilians for violations of the laws of the United States, the laws of the Territory, and "rules, regulations, orders, or policies" of the military authorities. The procedure prescribed for these military courts was that of special and summary courts-martial.

(e) The courts of the Territory were closed as of December 8 by order of the military.⁷

³Appendix II

⁴Appendix III

⁵Appendix IV

⁶Appendix V

⁷Appendix VI

(f) On December 16, 1941, by General Orders No. 29 the complete closing of the courts because of the existence [59] of martial law was partly relaxed.⁸ The relaxation was worded to include the United States District Court, though it has never been closed since its organization in 1900. The relaxation affected only civil matters.

(g) On January 27, 1942, the Military Governor by General Orders No. 579 modified further his grip upon the "courts in the Territory." By this order it was stated that the courts were restored to their full jurisdiction "as agents of the Military Governor". On the criminal side, however, the courts could not under the order summon a grand jury; on the criminal or civil side they could not grant a jury trial, or at any time grant a writ of habeas corpus.

(h) By appropriate military orders the Military Governor appointed army officers as judges of his provost courts. In August 1942 Major S. E. Murrell, J.A.G.D., was judge of Honolulu Provost Court No. 3 by reason of General Orders No. 122 of the Military Governor.¹⁰

(i) Apparently upon the theory that Governor Poindexter delegated the powers described in his December 7 proclamation to the office of Commanding General, General Short transferred to General Emmons his powers as Military Governor of Ha-

⁸Appendix VII

⁹Appendix VIII

¹⁰Appendix IX

waii on December 17, 1941¹¹ and on the same date General Emmons assumed the position of Military Governor [60] of Hawaii.¹² Accordingly, in August 1942 General Emmons was acting with respect to the civilian population of Hawaii as "Military Governor of Hawaii."

II.

Facts of White Case

On August 20, 1942, the petitioner, Harry E. White, a citizen of the United States and a civilian unconnected with the armed forces of the United States, who had been regularly engaged in the brokerage and investment business in Honolulu, was arrested by representatives of the Provost Marshal of Honolulu. White was placed by the Marshal in the jail of the City and County of Honolulu until August 22, on which date he was brought before the Provost Court over which Major Murrell presided. He was then, for the first time, informed of the charge. It was orally stated to him that he was in that court on a charge of embezzlement growing out of his conduct of his business, in violation of Chapter 183 of the Revised Laws of Hawaii, 1935.

Upon this oral and only notification or specification of the charge, White entered by his attorney a written plea to the jurisdiction of the provost court, thus putting in issue both its jurisdiction of the subject matter and its jurisdiction of his person. (See Exhibit A annexed to Petition) This plea was overruled on both grounds, whereupon White in

¹¹Honolulu Star-Bulletin, Dec. 19, 1941, 9.

¹²Appendix X

writing demanded a trial by jury. (See Exhibit B annexed to Petition) This demand was denied. White then filed a motion for a continuance supported by affidavits from his attorney, indicating lack of time to prepare a defense and ill health on the part of his attorney. (See Exhibit C annexed to Petition) This motion was also denied, and over White's objections the trial proceeded and he was found guilty of violating Chapter 183 of the Revised Laws of Hawaii, 1935, and sentenced to Oahu Prison—a Territorial prison—for five years. This trial started and was completed during the afternoon of August 25, 1942. It does not appear whether White was ever asked to plea to the oral charge.

The Provost Court mittimus ordered the Provost Marshal to take White and to deliver him to the Warden of Oahu Prison. It also ordered said Warden to receive White from the Marshal and to keep him until the sentence had been served. (See Exhibit D annexed to Petition)

There is no appeal allowed under the Military Orders from a provost court judgment. However, as a matter of grace, upon an administrative review by the Military Governor the Provost Court's five-year sentence in the White case was reduced to four years. (See Petitioner's Exhibit Q) No reason for the reduction was assigned.

White was confined as above outlined until released by order of this Court.

At all times herein mentioned and with respect to all acts done by himself or his agents, Generals Short and Emmons functioned as Military Gover-

nor Hawaii, and under the name and in the style thereof. [62]

III.

Further Facts

The highly successful Battle of Midway was over early in June 1942. After that battle it was and is common knowledge that the danger of a land invasion of Hawaii was removed and has never since re-existed. (See Petitioner's Exhibit A-1 under date of June 6 and 7, 1942; Petitioner's Exhibit E; Petitioner's Exhibit N-1 and N-2)

The Army concedes that to date no acts of sabotage have been committed by the Japanese population of the Territory — aliens and citizens included. (See Petitioner's Exhibit G-3)

1. It was stipulated that if Samuel B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, were called as a witness he would testify:

(a) That he has held that office since June 20, 1941;

(b) That during the time of the White case in the Provost Court of Honolulu the Territorial courts were "ready, willing and prepared to perform their normal functions"; (See also Petitioner's Exhibit F)

(c) That he was never consulted by the Military with respect to re-opening the Territorial courts for the trial of persons charged with violating the laws of the Territory;

(d) That subsequent to April 1942 there was no sound reason for denial by the military of trial by

jury to civilians charged with violating Territorial law.

2. It was stipulated that if Albert M. Cristy, [63] Senior Judge of the Circuit Court, First Judicial Circuit, Territory of Hawaii, were called he would testify to the same effect as he did in Habeas Corpus No. 298, In the Matter of the Application of Lloyd C. Duncan for A Writ of Habeas Corpus, in the United States District Court for the District of Hawaii, decided April 13, 1944, to wit, that he knew of no reason why the civil courts of the Territory could not have functioned normally in August 1942 and they would have done so except for military orders to the contrary.

3. Harry Steiner, Senior Judge of the Honolulu District Court, by stipulation testified to like effect with respect to his court which has power under Territorial law to bind defendants over for the action of the circuit court grand jury.

4. It was also stipulated that if I. M. Stainback, presently Governor of Hawaii, were called he would testify in addition to what he said in the Duncan case:

(a) That he has been Governor of Hawaii since August 24, 1942;

(b) That during August 20-25, 1942—the time elapsing between White's arrest and conviction in the Provost Court—the civilian population of Hawaii was orderly, invasion by the enemy was not imminent, and that trial of civilians by military courts for offenses against the laws of Hawaii was not only not necessary but not justified by then existing con-

ditions. (See also Petitioner's Exhibits G-1, H and I).

5. Like stipulation brought General Robert C. [64] Richardson's testimony in the Duncan case into this case. From such it appears that General Richardson was not in August 1942 acting as Military Governor of Hawaii—he was not even in Hawaii at that time. Yet his testimony in another case incorporated here makes him say that:

(a) The further the enemy is pushed back in the Pacific the greater becomes the danger to Hawaii;

(b) The trial of civilians by provost courts for violation of Territorial law was a military necessity. To enforce his orders it is necessary from a military standpoint for the Commanding General to have control of the courts so as to avoid the delays which he believes inherent in civil courts, and also so as to avoid the political (in its best sense) pressures to which he thinks the courts of our country are susceptible. (For an illustration of the General's theory of his power over and control of courts—even civil courts—see General Orders No. 31 (new series), Petitioner's Exhibit L, retracted by General Orders No. 38 (new series), Respondent's Exhibit 10—the most disgraceful threat ever made anywhere against the judicial branch of our Government.)

6. The same stipulation which incorporates the General's testimony also incorporates Admiral Nimitz's testimony. The Admiral, however, says nothing about a military necessity now or in 1942

for the trial of civilians by military courts for violations of Territorial law. He does, however, support the General's contention that martial law was necessary in 1942. [65]

IV.

Contentions

1. The petitioner obviously contends that at least in August 1942 no military necessity existed in Hawaii which might justify the trial of civilians by military courts for alleged violations of the laws of the Territory of Hawaii. Therefore, it is argued, White was unlawfully deprived of his constitutional rights to be charged with the commission of a felony only upon an indictment by a grand jury; to a trial by a jury; to time to prepare his defense and to process to secure the attendance of witnesses in his behalf.

2. The respondent contends that:

(a) The declaration of martial law and the suspension of the privilege of the writ of habeas corpus by the Governor of Hawaii on December 7, and as approved by the President, was valid and has never been revoked. As if the foregoing invocation of Section 67 of the Organic Act be insufficient in mains, suspended." (Up until this date the Military Governor of Hawaii on March 10, 1943, by General Orders No. 2, Section 1.01 (new series) declared that "martial law remains in effect and the privilege of the writ of habeas corpus has been, and remains, suspended." Up until this date the Military Governor had ordered the writ itself suspended.)

Therefore it is said this Court has no jurisdiction to grant the relief sought by the petitioner.

(b) In August 1942, Hawaii was in imminent danger of invasion and hence martial law was then valid; [66] additionally it is said Hawaii has been since December 7 and now is a theater of operations, part of a combat zone, in an active theater of war.

(c) The Provost Court had jurisdiction of the person and of the subject matter in the White case, and because of General Orders No. 4¹³ petitioner had no constitutional rights which the military had to respect.

(d) There was military necessity for trying civilians in provost courts in August 1942 for violation of Territorial law because the Governor of Hawaii had requested the Commanding General to exercise the judicial powers of the Territorial courts "until the danger of invasion is removed", and the General, under the name of Military Governor of Hawaii, has complied with the request of the Governor of Hawaii, the danger of invasion existing in August 1942 and today.

V.

CONCLUSIONS OF LAW

Upon the facts found (Parts I, II and III), I conclude as a matter of law that:

1. It is not necessary to a disposition of this case to decide whether or not martial law validly existed in Hawaii in August 1942.

¹³Appendix V.

2. Assuming a valid state of martial law to have existed in Hawaii in August 1942, White was nevertheless deprived of his constitutional rights under the Fifth and [67] Sixth Amendments because:

(a) The Governor of Hawaii had no judicial powers to delegate to the General, hence the Military Governor's agency—the Provost Court—had neither jurisdiction over White's person nor over the subject matter of the White case—the laws of the Territory of Hawaii.

(b) Ignore the fact that the General relied solely upon the December 7 proclamation of the Governor of Hawaii as the exclusive source of his power to try civilians in his military courts for violation of Territorial law. Can the White case be justified in point of law upon the theory that martial law itself gave the Commanding General power in August 1942 to try civilians for violations of Territorial law? The answer is that it did not, for the evidence clearly reveals that there was not then any military necessity for White's trial in a provost court. Upon this theory also White was deprived of his constitutional rights.

VI.

OPINION

The question of White's guilt or innocence of the charge is not involved in this case.

It is incumbent upon courts, especially United States Courts—

“—in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, . . .”¹⁴ [68]

War does not suspend the Constitution, or any part of it. It is the supreme law of the land at all times.¹⁵ Neither generals, governors, nor courts are exempt from its provisions at any time. The Federal Government’s power to wage war and to wage it successfully¹⁶ involves to be sure the rule that in wartime individual rights must yield to the face of necessity—and to the extent necessary—to the nation’s innate and paramount power of self preservation.¹⁷

That White may be guilty of violating the Territorial statute defining the offense of embezzlement and prescribing the penalty therefor or that military courts mete out military justice at an accelerated pace, unhampered by the Bill of Rights, are not reasons for ignoring the mandates of the Fifth and Sixth Amendments.

Constitutional safeguards for the protection of all who are charged with offenses are not to be disregarded in order to inflict merited punishment on some who are guilty.¹⁸

Military jurisdiction over a civilian unconnected

¹⁴Ex parte Quirin, 317 U.S. 1, 19.

¹⁵Ex parte Milligan, 4 Wall. 2, 71 U.S. 2, 120.

¹⁶War Powers Under the Constitution, Charles Evan Hughes, 42 A.B.A. Rep. 232, 238.

¹⁷Hirabayashi v. United States, 320 U.S. 81.

¹⁸Ex parte Quirin, 317 U.S. 1, 25.

with the armed forces must even during war be justified in point of law. What then is the justification for denying to White his constitutional rights?

(a) Upon the record—and it permits of no equivocation—the assigned reason is that the Governor of Hawaii [69] delegated to the General all of the “powers normally exercised by the judicial officers” of the Territory, which powers the General exercised in the White case under the name and style of “Military Governor of Hawaii.”

Of course Hawaii has never lawfully had either a military government or a “Military Governor”, even though it has had both in fact. Such a government and title are lawful only with respect to conquered foreign territory.¹⁹ Lacking the factual basis in Hawaii, United States of America, there is nothing then in the erroneously used title of “Military Governor” which lends support to the situation in the White case. The tinsel of the title here tends to obscure by justifiable American irritation the real question.

The precise and only question is, Did the Governor of Hawaii have any judicial power to delegate? If not, the General's acts in reliance thereon were null and void and effected in the White case a denial of his rights under the Fifth and Sixth Amendments. Inferred Presidential approval would avail naught.

To state the question is to answer it. No citation

¹⁹Ex parte Milligan, 4 Wall. 2, 71 U.S. 2.

other than the Organic Act is necessary. Water cannot rise higher than its source. By that Act, in conformity with the nation's democratic pattern, the government of Hawaii consists of three separate branches—the legislative, the executive, and the judicial—with neither at any time having the powers of the other two. That Act of Congress has been the law in Hawaii continuously and without interruption since 1900. Under it the Governor had no judicial power to give to the Commanding General on December 7, nor did the General need such in order to discharge his military duties.

The record prompts the statement that on December 7, 1941, the Governor of Hawaii "abdicated." History will treat him more charitably.

(b) Though tied to his pleadings—which accord with fact—there is nevertheless therein a faint suggestion that the General in the White case relied not upon the tenth paragraph of Governor Poin-dexter's December 7 proclamation, but upon his own powers as General in an area wherein martial law had been declared.

Despite the fact that the case was not presented to the Court upon this theory, let us look at it.

Fairman, recognizing the correctness of the first conclusion of law above stated, says:

If the situation were governed solely by Section 67, construed nicely as a matter of agency, it might be questioned whether the Governor had not exceeded his powers. But so technical a view should not be taken of a provision meant to cover a multitude of dangers. If

"martial law" was to prevail, it should certainly be of such a form as would respond to the actual emergency. . . . There might have been danger of a different magnitude, such as a condition of "lawless violence," where the commander could properly have acted in aid of the Governor. But with the emergency such as it was . . . certainly the commander had a much larger scope of action whether derived from Section 67 or otherwise."²⁰

The date of the White case will here bear repetition: August 1942.

Fairman, after distinguishing the terms "martial law", "military law", and "military government", says by martial law he means "martial rule". He defines it as [71] a rule springing from out of our nation's power of self preservation depending—

. . . for its justification upon . . . public necessity. . . it is measured by the needs of the occasion.²¹

In the foreword of his book the publisher puts it nicely also by saying:

. . . "martial law" is largely one of powers and liabilities, resting upon a background of what has been done, in fact, under given circumstances, rather than any great wealth of judicial precedents.²²

²⁰The Law of Martial Rule, Col. Chas. Fairman, 2nd edition (1943) at pp. 241-242.

²¹Fairman, *op. cit.* supra Chap. III, p. 47..

²²Fairman, *op. cit.* supra Foreword, p. iii.

Such indeed is and always has been the correct concept of martial law. It was so stated in *Ex parte Milligan* in 1866, which is still law today. Martial law is the law of public necessity and whether the year be 1866 or 1942 the necessity is determined upon and in relation to the then existing facts.²³

As necessity creates the rule, so it limits its duration.²⁴

Thus it is that Anthony rightly states:

Martial law never was intended to be of a permanent or even semi-permanent nature. Its existence is bottomed upon necessity . . . The moment order is restored, the necessity for martial law (hence its justification) ceases to exist.²⁵

What then was the military necessity in Hawaii in August 1942 for the trial of White upon a Territorial charge in a military court? Absolutely none is revealed. But it is argued that the General says it was necessary [72] from a military standpoint and out of deference to the executive branch, especially during wartime, the courts should not look beyond to the facts. Such is a doctrine itself imminently dangerous to the United States. The validity of martial law is always a judicial ques-

²³*Korematsu v. United States*, 140 F. (2) 289, 296.

²⁴*Ex parte Milligan*, 4 Wall. 2, 71 U.S. 2, 127.

²⁵*Martial Law in Hawaii*, J. Garner Anthony, Vol. 31 (1943), *California Law Review* 477, 498.

tion.²⁶ One cannot lift himself up by his bootstraps. Here we are concerned only with the validity of the White case. Saying it was necessary to give him a military trial does not make it so.

A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or facts change even though valid when passed.²⁷

Here it is clear upon the record and upon the facts that White's military trial advanced, preserved, protected the military situation in Hawaii in August 1942 not one iota. Indeed, the converse may be said to be true. Necessity cannot be manufactured even by General Orders. It must be real, not artificial.

So it is that even under this theory, lacking the basis in fact of military necessity, there was no justification for denying to White his constitutional rights as was here done by the Provost Court.

The privilege of the writ is granted and the petitioner is discharged and his bond cancelled.

Dated at Honolulu, T. H., May 2, 1944.

(Signed) J. FRANK McLAUGHLIN

Judge United States District
Court, District of Hawaii

[73]

²⁶*Sterling v. Constantin*, 287 U.S. 378.

²⁷*Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547.

APPENDIX I

Territory of Hawaii

A Proclamation.

Whereas, it is provided by Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, that, whenever it becomes necessary, the Governor of that territory may call upon the commander of the military forces of the United States in that territory to prevent invasion; and

Whereas, it is further provided by the said section that the governor may in case of invasion or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus and place the territory under martial law; and

Whereas, the armed forces of the Empire of Japan have this day attacked and invaded the shores of the Hawaiian islands; and

Whereas, it has become necessary to repel such attack and invasion; and

Whereas, the public safety requires:

Now, Therefore, I, J. B. Poindexter, Governor of the Territory of Hawaii, do hereby announce that, pursuant to said section, I have called upon the Commanding General, Hawaiian Department, to prevent such invasion;

And, pursuant to the same section, I do hereby suspend the privilege of the writ of habeas corpus until further notice;

And, pursuant to the same section, I do hereby place the said territory under martial law; [74]

And I do hereby authorize and request the Com-

manding General, Hawaiian Department, during the present emergency and until the danger of invasion is removed, to exercise all the powers normally exercised by me as Governor;

And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority, during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this territory and of the counties and cities therein, and such other and further powers as the emergency may require;

And I do require all good citizens of the United States and all other persons within the Territory of Hawaii to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the Commanding General, Hawaiian Department, or his subordinates, may issue during the present emergency.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Territory of Hawaii to be affixed.

Done at Honolulu, Territory of Hawaii, this 7th day of December, 1941.

[Seal]

J. B. POINDEXTER,

Governor of the Territory of
Hawaii.

By the Governor:

CHARLES M. HITE,

Secretary of Hawaii. [75]

APPENDIX II.

Governor Poindexter's December 7 Radiogram
to the President

"I have today declared martial law (throughout the Territory of Hawaii and have suspended the privilege of the writ of habeas corpus. Your attention is called to Section 67 of the Hawaiian Organic Act for your decision on my action." [76]

APPENDIX III.

President's Radiogram to Governor Poindexter
Washington, D: C.
48° 4 PM 9

Honorable Joseph B. Poindexter
Governor, Territory of Hawaii
Honolulu

Your telegram of December seventh received and your action in suspending the writ of habeas corpus and placing the Territory of Hawaii under martial law in accordance with U. S. C. Title 48 Section 532 has my approval.

FRANKLIN D. ROOSEVELT

[77]

APPENDIX IV.

Proclamation—United States Army

Headquarters, Hawaiian Department

Fort Shafter, 7 December 1941

To the People of Hawaii:

The military and naval forces of the Empire of Japan have attacked and attempted to invade these islands.

Pursuant to section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, the Governor of Hawaii has called upon me, as commander of the military forces of the United States in Hawaii, to prevent such invasion; has suspended the privilege of the writ of habeas corpus; has placed the Territory under martial law; has authorized and requested me and my subordinates to exercise the powers normally exercised by the governor and by subordinate civil officers; and has required all persons within the Territory to obey such proclamations, orders, and regulations as I may issue during the present emergency.

I announce to the people of Hawaii, that, in compliance with the above requests of the Governor of Hawaii, I have this day assumed the position of military governor of Hawaii, and have taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense.

All persons within the Territory of Hawaii, whether residents thereof or not, whether citizens of the United [78] States or not, of no matter

what race or nationality, are warned that by reason of their presence here they owe during their stay at least a temporary duty of obedience to the United States, and that they are bound to refrain from giving, by word or deed, any aid or comfort to the enemies of the United States. Any violation of this duty is treason, and will be punished by the severest penalties.

The troops under my command, in putting down any disorder or rebellion and in preventing any aid to the invader, will act with such firmness and vigor and will use such arms as the accomplishment of their task may require.

The imminence of attack by the enemy and the possibility of invasion make necessary a stricter control of your actions than would be necessary or proper at other times. I shall therefore shortly publish ordinances governing the conduct of the people of the Territory with respect to the showing of lights, circulation, meetings, censorship, possession of arms, ammunition, and explosives, the sale of intoxicating liquors and other subjects.

In order to assist in repelling the threatened invasion of our island home, good citizens will cheerfully obey this proclamation and the ordinances to be published; others will be required to do so. Offenders will be severely punished by military tribunals or will be held in custody until such time as the civil courts are able to function.

Pending further instructions from this headquarters the Hawaii Defense Act and the Proclamation of the Governor of Hawaii heretofore is-

sued thereunder shall continue in [79] full force and effect.

Signed) WALTER C. SHORT

Lieutenant General, U. S.

Army, Commanding.

Military Governor of Hawaii. [80]

APPENDIX V.

General Orders No. 4 regulating trial of Civilians
by Military Tribunals

Territory of Hawaii

Office of the Military Governor

Fort Shafter, T. H.

7 December 1941

General Orders

No. 4

By virtue of the power vested in me as Military Governor, the following policy governing the trial of civilians by Military Commissions and Provost Courts is announced for the information and guidance of all concerned.

1. Military commissions and provost courts shall have power to try and determine any case involving an offense committed against the laws of the United States, the laws of the Territory of Hawaii or the rules, regulations, orders or policies of the military authorities. The jurisdiction thus given does not include the right to try commissioned or enlisted personnel of the United States Army and Navy. Such persons shall be turned over to their respective services for disposition.

2. Military commissions and provost courts will adjudge sentences commensurate with the offense committed. Ordinarily, the sentence will not exceed the limit of punishment prescribed for similar offenses by the laws of the United States or the Territory of Hawaii. However, the courts are not bound by the limits of punishment prescribed [81] in said laws and in aggravated cases and in cases of repeated offenses the courts may adjudge an appropriate sentence.

3. The record of trial in cases before military commissions will be substantially similar to that required in a special court martial. The record of trial in cases before provost courts will be substantially similar to that in the case of a Summary Court Martial.

4. The procedure in trials before military commissions and provost courts will follow, so far as it is applicable, the procedure required for Special and Summary Courts Martial respectively.

5. The records of trial in all cases will be forwarded to the Department Judge Advocate. The sentences adjudged by provost courts shall become effective immediately. The sentence adjudged by a military commission shall not become effective until it shall have been approved by the Military Governor.

6. All charges against civilian prisoners shall be preferred by the Department Provost Marshal or one of his assistants.

7. The Provost Marshal is responsible for the

prompt trial of all civilian prisoners and for carrying out the sentence adjudged by the court.

8. Charges involving all major offenses shall be referred to a military commission for trial. ~~Other~~ cases of *lessor* degree shall be referred to provost courts. The maximum punishment which a provost court may adjudge is [82] confinement for a period of 5 years, and a fine of not to exceed \$5,000.00. Military Commissions may adjudge punishment commensurate with the offense committed and may adjudge the death penalty in appropriate cases.

9. In adjudging sentences, provost courts and military commissions will be guided by, but not limited to the penalties authorized by the courts martial manual, the laws of the United States, the Territory of Hawaii, the District of Columbia, and the customs of war in like cases.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Lt. Col., J.A.G.D.

Executive Officer [83]

APPENDIX VI.

Text of Order of Chief Justice of Supreme Court of Hawaii posted at the entrance of Judiciary Building on December 8, 1941, announcing the closing of all Territorial courts.

“Under the direction of the commanding general, Hawaiian Department, all courts of the Territory of Hawaii will be closed until further notice.

Without prejudice to the generality of the foregoing, all time for performing any act under the process of the Territory will be enlarged until after the courts are authorized to resume their normal functions." [84]

APPENDIX VII.

General Orders No. 29 authorizing limited action of
Territorial Civil Courts

Territory of Hawaii

Office of the Military Governor

Fort Shafter, T. H.

16 December 1941

General Orders

No. 29

Whereas, pursuant to the proclamation of Martial Law in the Territory of Hawaii the operation of the civil courts in the Territory of Hawaii has been suspended.

Now, therefore, by virtue of the authority vested in me as Military Governor, and for the purpose of more effectively carrying out the duties of such Military Governor, it is hereby ordered that all courts in the Territory of Hawaii are hereby authorized to exercise the following powers normally exercised by them during the existence of civil government:

1. The United States District Court for the Territory of Hawaii is hereby authorized to receive and file all petitions for the condemnation of land in the Territory of Hawaii, under any statutes and

laws of the United States authorizing condemnation, needed by the Army or Navy of the United States; to receive and file deposits of checks into the Registry of said court, certificates of the clerk of said court and the Declarations of Taking; to make and enter orders on the Declaration of Taking, and orders of Immediate Possession; and to file and enter notices of pendency of [85] action, with reference to such condemnations.

2. The Supreme Court of the Territory of Hawaii may make and enter all orders necessary for the preservation of the rights of litigants in all pending appeals or appeals which may be perfected to said court, and may hear and determine all such appeals, and make such further orders as may be necessary to carry out or enforce said orders, or any of them.

3. The circuit courts of the Territory of Hawaii and the several divisions thereof are hereby authorized to exercise the following of their normal powers under the civil laws applicable thereto:

Probate: To hear and determine all probate matters, provided, however, that no contested matter may be heard or entertained save by consent of the parties and which does not involve the subpoenaing of witnesses.

Equity: To hear and determine all matters involving trusts, trust accounts, bills of instructions and similar matters, provided, however, that no writs of habeas corpus, prohibition, mandamus, injunction or specific performance shall be issued or granted by any circuit judge, and further provided

that no matter shall be heard or entertained which involves the subpoenaing of witnesses.

Actions at Law: To hear and determine all pending matters not involving jury trials where the subpoenaing of witnesses is not required; to hear and determine all appeals heretofore or hereafter perfected from the district courts; to make and enter all orders or judgments necessary to facilitate the immediate taking of land under condemnation proceedings by the Territorial, City and County, or county officers, orders of possession and details required therewith which do not involve the subpoenaing of witnesses or compulsory process.

Division of Domestic Relations and Juvenile Court: To hear and determine all matters either pending or to be brought for the support and maintenance of women and minor children or other dependants; to hear and determine all probate, guardianship and adoption matters as are exclusively under the jurisdiction of the Division of Domestic Relations; to hear all matters properly coming before the Juvenile Court.

Criminal Cases on Appeal: To hear and determine all pending appeals in criminal cases to the circuit courts of the Territory from district magistrates which do not involve jury trials.

Land Court: To hear and determine all pending matters not requiring the subpoenaing of witnesses; all formal matters connected with subdivisions; all normal minor petitions for the purpose of notation of marriage, death, divorce and other matters re-

quired to be noted on transfer certificates of titles; proceedings for substitution of lost certificates of title; recording of conveyances; issuance of transfer certificates of title; notations of encumbrances; ex parte petitions not involving the subpoenaing of witnesses; and the maintaining of the Office of the Registrar of the Land Court for the purpose of facilitating searching of records and certificates of transfers.

District Courts: Finish all pending matters where the [87] subpoenaing of witnesses is not required.

All Courts: All courts authorized under the civil law to do so may perpetuate testimony or take depositions of witnesses and may make and enter all necessary orders to enable litigants to perfect appeals.

By order of the Military Governor:

(Signed) **THOMAS H. GREEN**

Lt. Col., J.A.G.D.

Executive [88]

APPENDIX VIII

General Orders No. 57

Territory of Hawaii

Office of the Military Governor

Iolani Palace

Honolulu, T. H.

27 January 1942

General Orders

No. 57

Section I. Regulating Imports to Territory of Hawaii.

Section II. Civil Courts.

* * *

Section II. Civil Courts.—Whereas, pursuant to the proclamation of martial law in the Territory of Hawaii the operation of the civil courts in the Territory of Hawaii was suspended; and

Whereas, by General Orders No. 29, dated December 16, 1941, the courts in said Territory were authorized to exercise certain of the powers normally exercised by them during the existence of civil government; and

Whereas, it is now advisable, that said courts be authorized to exercise certain other of their said powers,

Now Therefore, the United States District Court for the Territory of Hawaii, the Supreme Court of said Territory, and the justices thereof, the circuit courts, circuit judges at chambers, land court, juvenile court, tax appeal court and the district magistrates are hereby authorized, as agents of the

Military Governor, to exercise their respective functions according to law, as it existed immediately prior [89] to the declaration of martial law, except in the following respects:

1. No trial by jury shall be had, no session of the grand jury shall be held, nor shall any writ of habeas corpus be issued;

2. No circuit court or district magistrate shall exercise criminal jurisdiction except: Subject to the limitations prescribed by Section 4 in respect to the subpoenaing of witnesses, the circuit and district courts may dispose of cases pending on December 7, 1941, either upon plea or by trial whenever the intervention of a jury is not necessary or by order of nolle prosequi or dismissal on proper motion;

3. No suit, action or other proceeding shall be permitted against any member of the armed forces of the United States for any act done in line of or under color of duty; nor shall any suit, action or other proceeding be maintained against any person employed or engaged in any occupation, business or activity under the direction of the Military Governor or essential to the national defense for any act done within the scope of such employment;

4. No judgment by default shall be entered against any party except upon proof by affidavit or otherwise that the party is not engaged in military service nor employed or engaged in any occupation, business or activity under the direction of the Military Governor, or otherwise, essential to the national defense; nor shall any subpoena issue to re-

quire the attendance as a witness of any person so engaged or employed. [90]

All prior orders inconsistent herewith are hereby repealed.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Colonel, J.A.G.D., Executive

[91]

APPENDIX IX.

General Orders No. 122

Territory of Hawaii

Office of the Military Governor

Iolani Palace

Honolulu, T. H.

1 July 1942

General Orders

No. 122

Section I. Provost Court No. 3, Honolulu

Section II. Collection and Disposal of Swill, Dry Garbage, and Rubbish.

Section I. Provost Court No. 3, Honolulu.—Major Samuel E. Murrell, Judge Advocate General's Department, is appointed as a Provost Court and is assigned to duty as Provost Court No. 3, at Honolulu, Territory of Hawaii, for the trial of such persons as may be properly brought before it.

By order of the Military Governor:

(Signed) THOMAS H. GREEN

Brigadier General, A. U. S.,

Executive [92]

APPENDIX X

Proclamation of General Enmons Assuming
Military Governorship

To the people of the Territory of Hawaii:

Whereas, the Governor of the Territory of Hawaii, J. B. Poindexter, by a proclamation dated December 7, 1941, and made pursuant to the authority of Section 67 of the Organic Act of the Territory of Hawaii, approved April 30, 1900, called upon the Commanding General, Hawaiian Department, as commander of the military forces of the United States in this Territory, to prevent invasion; suspended the writ of habeas corpus; placed the Territory under martial law; authorized and requested the Commanding General, Hawaiian Department, and his subordinates, to exercise the powers normally exercised by the Governor and by subordinate civil officers; and required all persons within the said Territory to obey such proclamations, orders, and regulations as the Commanding General, Hawaiian Department, or his subordinates, might issue during the present emergency;

Whereas, Lieutenant General Walter C. Short, U. S. Army, Commanding the Hawaiian Department, by proclamation dated December 7, 1941, announced to the people of the Territory of Hawaii that, in compliance with the above recited requests of the Governor of the Territory of Hawaii, he had that day assumed the position of Military Governor of the Territory of Hawaii and had taken charge of the government of the Territory, of the preservation of order therein, and of putting these islands in a proper state of defense;

Whereas, Lieutenant General Walter C. Short, U. S. [93] Army, Commanding the Hawaiian Department, has this day relinquished command of the Hawaiian Department in accordance with War Department radiogram dated December 17, 1941;

Whereas, Lieutenant General Walter C. Short, U. S. Army, Commanding the Hawaiian Department, has this day relinquished his position as Military Governor of the Territory of Hawaii;

And Whereas, I have this date assumed command of the Hawaiian Department in accordance with War Department radiogram dated December 17, 1941;

Now, therefore, I, Delos C. Emmons, announce to the people of the Territory of Hawaii that I have this day assumed the position of the Military Governor of the Territory of Hawaii, and as such Military Governor I adopt and confirm the instructions contained in the fifth to ninth paragraphs, inclusive, of the proclamation of the Military Governor of the Territory of Hawaii dated December 7, 1941, and the general orders and other actions taken pursuant thereto.

Done at Headquarters Hawaiian Department, Fort Shafter, Territory of Hawaii, this 17th day of December, 1941.

(Signed) DELOS C. EMMONS,

Lieutenant General, U. S.
Army, Commanding, Military Governor of Hawaii.

[Endorsed]: Filed May 2, 1944. [94]

[Title of District Court and Cause.]

EXCEPTIONS TO DECISION

The Respondent, Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, respectfully objects and excepts to the findings and conclusions contained in the Decision filed herein on May 2, 1944, and to the ruling and order granting the privilege of the writ of habeas corpus, discharging the petitioner, and cancelling his bond.

Dated: Honolulu, T. H., this 3rd day of May, 1944.

G. D. CROZIER,

United States Attorney,
District of Hawaii.

EDWARD TOWSE,

Assistant United States At-
torney, District of Hawaii.
Attorneys for Respondent.

The foregoing exceptions are hereby allowed.

Dated: Honolulu, T. H., this 3 day of May, 1944.

/s/ J. FRANK McLAUGHIN,

Judge, United States District
Court for the Territory of
Hawaii.

[Endorsed]: Filed May 3, 1944. [96]

In the United States District Court for the
Territory of Hawaii

Habeas Corpus No. 300

In the Matter of the Application
of

HARRY E. WHITE

For a Writ of Habeas Corpus

JUDGMENT

Pursuant to the findings and conclusions of the Court filed in the above entitled Court on the 2nd day of May, 1944,

It Is Hereby Ordered, Adjudged and Decreed that the writ of habeas corpus issued herein be and the same hereby is sustained, and the petitioner be and he is hereby ordered discharged from custody of the respondent, and

It Is Further Ordered, Adjudged and Decreed that in event an appeal is taken in this matter, the petitioner's Five Hundred Dollars (\$500.00) appearance bond shall continue as and for his bond pending appeal of the above entitled matter.

Dated: Honolulu, Hawaii, May 2, 1944.

/s/ J. FRANK McLAUGHLIN,

Judge, United States District

Court in and for the Territory of Hawaii.

[Endorsed]: Filed May 4, 1944. [98]

[Title of District Court and Cause.]

ORDER ON TAKING APPEAL

Upon Motion of Respondent, William F. Steer, Colonel, United States Army, and it appearing that the Findings and Conclusions as contained in Decision were not made in open Court at the conclusion of the hearing and argument on April 21, 1944, and good cause otherwise appearing therefor, it is hereby

Ordered, Adjudged and Decreed that Rule 126 of this Court shall not be applicable to this cause and the time for taking, allowing and perfecting appeal from the final decision and judgment herein filed on May 4, 1944, be and the same hereby is fixed at the period of ninety (90) days from the filing of said judgment and until and including August 2, 1944; and it is

Further Ordered, Adjudged and Decreed that rule 124 of this Court shall not be applicable to this cause and the appeal herein may be taken by filing a written notice of appeal from the aforesaid final decision and judgment within the aforesaid ninety (90) day period and in the manner prescribed in the rules of Civil Procedure for the District Courts of the United States

Dated this 4th day of May, 1944, at Honolulu,
T. H.

/s/ D. E. METZGER,

Judge, United States District
Court, District of Hawaii.

/s/ J. FRANK McLAUGHLIN,

Judge, United States District
Court, District of Hawaii.

[Endorsed]: Filed May 4, 1944. [100]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the Respondent, Wm. F. Steer, Colonel, Infantry, United States Army, Provost Marshal, Central Pacific Area, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment filed herein on May 4, 1944, sustaining the Writ of Habeas Corpus issued herein and discharging the Petitioner from the custody of the Respondent.

Dated this 4th day of May, 1944, Honolulu, T. H.

G. D. CROZIER,

United States Attorney,

District of Hawaii.

EDWARD TOWSE,

Assistant United States At-
torney, District of Hawaii.

Attorneys for Respondent

Appellant.

Allowed:

J. FRANK McLAUGHLIN,

Judge of the above entitled

Court. [102]

Receipt of a copy of the within Notice of Appeal
is acknowledged this 4th day of May, 1944.

(S) **FRED PATTERSON,**

(S) **E. J. BOTTS.**

[Endorsed]: Filed May 5, 1944. [101]

[Title of District Court and Cause.]

STIPULATION FOR RECORD

It is stipulated by and between counsel for Re-
spondent Appellant and Petitioner Appellee that
the record on appeal in these proceedings shall con-
sist of the entire record in this case, to-wit, the
following:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.

3. Stipulation filed April 18, 1944 substituting Colonel Wm. F. Steer as Respondent and amending Petition.

4. Answer to Petition and Order to Show Cause.

5. Traverse to Return to Order to Show Cause.

6. Writ of Habeas Corpus, Marshal's Return and excerpt from Proceedings showing physical production of Petitioner in Court.

7. Stipulation and minute entry that Answer to Petition and Rule shall constitute Return to Writ and Traverse shall constitute Traverse to Return.

8. Four Stipulations filed April 20, 1944 and Stipulation filed April 21, 1944 amending stipulation filed April 20, 1944, with all exhibits and testimony admitted in evidence by said stipulations and Orders of Court.

9. Oral Opinion of Court delivered April 21, 1944 and minute entry showing exception, notice of appeal and Court's allowance of ninety (90) days to perfect appeal.

10. Decision of Court rendered May 2, 1944.

11. Exceptions to Decision filed May 3, 1944.

12. Final Judgment sustaining Writ of Habeas Corpus dated May 4, 1944.

13. All Court minute entries. [104]

14. Order on Taking Appeal filed May 4, 1944.

15. Notice of Appeal dated May 4, 1944 to the Circuit Court of Appeals, Ninth Circuit.

16. This Stipulation.

17. Clerk's certification of transcript of record on appeal.

Dated this 4th day of May, 1944, Honolulu, T. H.

/s/ G. D. CROZIER

United States Attorney, Dis-
trict of Hawaii

/s/ EDWARD TOWSE

Assistant United States At-
torney, District of Hawaii

Attorneys for Respondent

Appellant

/s/ FRED PATTERSON

/s/ E. J. BOTTS

Attorneys for Petitioner Ap-
pellee

[Endorsed]: Filed May 5, 1944. [105]

From the Minutes of the United States District
Court for the Territory of Hawaii

Saturday, April 15, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts, and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively. Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, Mr. Eugene V. Slatery, Lt. Col. Office of the Military Governor, Mr. Angus M. Taylor, Jr., Lieutenant, United States Army, and Mr. Nils Tavares, Attorney General of

the Territory of Hawaii. This case was called for hearing on the matter of issuance of process.

Following a discussion on this matter by respective counsel and the Court, issuance of the Order to Show Cause was granted by the Court. The Order to Show Cause ~~was~~ made returnable on Thursday, April 20, 1944 at 10 a. m.

The Court granted petitioner three days after filing of the return to the Order to Show Cause to file his traverse. [106]

From the Minutes of the United States District
Court for the Territory of Hawaii
Tuesday, April 18, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, Mrs. G. D. Crozier and Mr. Edward A. Towse, United States Attorney and Assistant United States District Attorney, respectively, Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor, and Mr. Nils Tavares, Attorney General of the Territory of Hawaii, counsel for the respondent, Clarence T. Stevenson. This case was called for hearing on the procedure to be followed, introduction of evidence, and on the issuance of the writ of habeas corpus.

Upon motion of Mr. Ennis, the name of William

F. Steer, Col. United States Army, Provost Marshal, was substituted as respondent in this case in place of Clarence T. Stevenson by order of the Court.

It was stipulated by respective counsel that the testimony offered in the Lloyd C. Duncan case, Habeas Corpus No. 298, may be offered in this case.

Answer to the petition and order to show cause was presented to the Court and was ordered to be placed on file.

Petitioner's traverse was presented to the Court and was ordered to be placed on file.

Motion for the issuance of the Writ was made by Mr. Botts. [107]

Mr. Ennis objected to the issuance of the writ and moved for the dismissal of the petition upon the grounds that the privilege of the writ of habeas corpus in this Territory remains suspended. Motion to dismiss the petition was denied by the Court and an exception was noted and allowed the respondent.

Issuance of the writ, returnable at 3:15 this day was then granted by the Court and an exception was noted and allowed the respondent. Service of the writ was accepted by Mr. Ennis on behalf of the respondent.

At 3:20 p. m., petitioner was produced before the Court.

Mr. Patterson then moved that petitioner be enlarged on bail. This motion was objected to by Mr. Ennis.

Motion for an enlargement of the petitioner was then granted by the Court, bail being set at \$500.00. Mr. Ennis excepted to the granting of this motion, an exception being allowed the respondent.

It was then stipulated by respective counsel that the return to the order to show cause be considered the return to the writ of habeas corpus, the traverse to the return to the order to show cause be considered the traverse to the return to the writ of habeas corpus. [108]

From the Minutes of the United States District
Court for the Territory of Hawaii
Wednesday, April 19, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, and Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department. This case was called for the purpose of making proper service of the writ upon the respondent.

Following a discussion on this matter, the United States Marshall was directed by the Court to personally serve Col. William F. Steer, Provost Marshall, with the writ and to make due return of his service. [109]

From the Minutes of the United States District
Court for the Territory of Hawaii
Thursday, April 20, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, Mr. William J. Hughes, Jr., Lt. Col. Judge Advocate General's Department, and Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor, for the respondent William F. Steer, Provost Marshal. This case was called for hearing.

It was stipulated by respective counsel that the Stipulation filed on April 18, 1944, be amended as to Paragraph 3, line 1, by changing therein Paragraph III to Paragraph II.

Stipulation between counsel for the admission in evidence of the testimony and evidence in the case of ex parte Lloyd C. Duncan, Habeas Corpus No. 298 of this court was presented to the court, allowed and ordered to be placed on file.

Statement by Admiral Halsey appearing in the Army & Navy Register under date of January 22, 1944 inviting the Japanese fleet to come out and fight was admitted in evidence as Petitioner's Exhibit "A," marked and ordered filed.

Speech by General Arnold under date of Jan-

uary 17, 1943, covering spearheads driven into Japanese Pacific Defense, was admitted in evidence as Petitioner's Exhibit "B," marked and ordered filed.

Quotation by the War Department giving its present plan of accepting citizens of Japanese ancestry under the selective service draft was admitted in evidence as Petitioner's Exhibit "C," marked and ordered filed. [110]

Article appearing in the Army & Navy Journal under date of December 15, 1943, with reference to statements made by both Admiral Halsey and the Secretary of Navy inquiring as to the whereabouts of the Japanese fleet, was admitted in evidence, as Petitioner's Exhibit "D," marked and ordered filed.

Article appearing in the Army & Navy Register under date of March 4, 1944, by Maj. Gen. Hale, Commander of the 7th Air Force, giving the progress of the war in the Central Pacific Area and with a statement to the effect that imminent danger of invasion was not lifted until after the Battle of Midway, was admitted in evidence as Petitioner's Exhibit "E," marked and ordered filed.

A report of cases handled by both the Supreme Court and Circuit Courts of Hawaii, covering the period 1939 to 1943, was admitted in evidence as Petitioner's Exhibit "F," marked and ordered filed.

Copy of letter dated April 30, 1943, from Galen M. Fisher to Chas. F. Loomis, was admitted in

evidence as Petitioner's Exhibit "G-1," marked and ordered filed.

Copy of letter dated May 12, 1943, from W. A. Gabrielson to Chas. F. Loomis, was admitted in evidence as Petitioner's Exhibit "G-2," marked and ordered filed.

Copy of letter dated May 17, 1943, from Kendall J. Fielder to Chas. F. Loomis, was admitted in evidence as Petitioner's Exhibit "G-3," marked and ordered filed.

Copy of letter dated April 4, 1944, from Ralph C. Scott to Garner Anthony, covering war risk rates in Hawaii, was admitted in evidence as Petitioner's Exhibit "H," marked and ordered filed.

Comparative Statement of gross income and consumption tax collections and tax base for the calendar years 1941, 1942, and 1943, was admitted in evidence as Petitioner's Exhibit "I," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 1, 1943, containing statement of Lt. Gen. Emmons, was admitted in evidence as Petitioner's Exhibit "J-1," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of July 5, 1943, containing statement of Lt. Gen. Richardson, was admitted in evidence as Petitioner's Exhibit "J-2," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of June 7, 1943, containing statement of Lt. Gen. Richardson, was admitted in

evidence as Petitioner's Exhibit "J-3," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of February 4, 1944, containing Proclamation of C. W. Nimitz, Admiral, United States Navy, Military Governor of the Marshall Islands, was admitted in evidence as Petitioner's Exhibit "J-4," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of July 15, 1943, containing an address by Lt. Gen. Richardson to the Honolulu Chamber of Commerce, was admitted in evidence as Petitioner's Exhibit "J-5," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of May 27, 1943, containing a statement by Lt. Gen. Emmons, was admitted in evidence as Petitioner's Exhibit "J-6," marked and ordered filed. [111]

Copy of the petition to the Secretary of State by citizens of Japanese ancestry requesting that steps be taken to negotiate with the Japanese government for a simplified procedure of expatriation by American-Japanese with that government was admitted in evidence as Petitioner's Exhibit "K," marked and ordered filed.

Copy of General Orders No. 31, Office of the Military Governor of Hawaii, dated August 25, 1943, was admitted in evidence as Petitioner's Exhibit "L," marked and ordered filed.

Copy of "The Volunteer" was admitted in evi-

dence as Petitioner's Exhibit "M," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of March 10, 1943, containing an address by Admiral Nimitz, was admitted in evidence as Petitioner's Exhibit "N-1," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 1, 1943, containing an interview with General Emmons by Frank H. Bartholomew, United Press Agent, on the defense of Hawaii, was admitted in evidence as Petitioner's Exhibit "N-2," marked and ordered filed.

Newspaper clippings from the Honolulu Star-Bulletin under dates of June 7, 1943 and December 7, 1943, containing statements by Admiral Nimitz, were admitted in evidence as Petitioner's Exhibit "N-3," marked and ordered filed.

Newspaper clipping from the Honolulu Star-Bulletin under date of January 27, 1944, containing statement by Rear Admiral Robert B. Carney, Chief of Staff to Admiral Halsey, on the progress of the naval attack on Rabaul, Kavieng, and Nauru, was admitted in evidence as Petitioner's Exhibit "N-4," marked and ordered filed.

Newspaper clipping from the Honolulu Advertiser under date of January 19, 1944, containing statement by Rear Admiral Robert B. Carney, Chief of Staff to Admiral Halsey, on the progress of the naval attack on Rabaul, Kavieng, and Nauru, was admitted in evidence as Petitioner's Exhibit "N-5," marked and ordered filed.

Newspaper clipping From the Honolulu Advertiser under date of February 4, 1944, containing statement of Undersecretary of War, Robert Patterson, with reference to the battle for the Marshall Islands, was admitted in evidence as Petitioner's Exhibit "N-6," marked and ordered filed.

Memorandum to Col. Wm. R. C. Morrison by Lt. Angus M. Taylor, Jr., covering the number of American-Japanese now serving in the United States Army, casualties thereof, number of Japanese interned in Hawaii and evacuated to the mainland for internment, number of Japanese employed on military and naval projects, and the work performed by petitioner during his imprisonment was admitted in evidence as Petitioner's Exhibit "O," marked and ordered filed.

Newspaper clipping from the Honolulu Advertiser under date of April 6, 1944, containing a statement by Gen. Emmons, Commander of the Western Defense Command, was admitted in evidence as Respondent's Exhibit No. 1, marked and ordered filed. [112]

Photostatic copy of draft of letter from the Secretary of War, Attorney General, and Secretary of Interior, to the President, photostatic copy of letter of the President's reply thereto, together with a copy of the proposed proclamation, one by the Governor of Hawaii and one by General Emmons, covering the restoration of civil authority in the Territory of Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-1, marked and ordered filed.

Photostatic copy of a letter dated February 1, 1943 to Secretary Stimson from the President bearing a typewritten signature, and photostatic copy of a letter dated January 18, 1943, to the President bearing the actual signature of the Secretary of War, Attorney General, and the Secretary of the Interior, and annexed thereto, copy of the proposed proclamation, one by the Governor of Hawaii and one by General Emmons, covering the restoration of civil authority in the Territory of Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-2, marked and ordered filed.

Photostatic copy of the letter from the President to the Secretary of War, dated February 1, 1943, covering the restoration of civil authority in Hawaii, was admitted in evidence as Respondent's Exhibit 2-3, marked and ordered filed.

Photostatic copy of agreed draft of a letter from the Governor of Hawaii to General Emmons, dated January 18, 1943, covering the restoration of civil authority in Hawaii, was admitted in evidence as Respondent's Exhibit No. 2-4, marked and ordered filed.

Summary of cases in Provost Court for the month of February, 1944, was admitted in evidence as Respondent's Exhibit No. 3, marked and ordered filed.

Statistics of population estimated for the Territory of Hawaii prepared by the Bureau of Vital Statistics at Honolulu, for the period from July 1, 1943 to July 1, 1944, was admitted in evidence as

Respondent's Exhibit No. 4, marked and ordered filed.

Report covering the number of births of persons of Japanese ancestry registered with the Japanese Consulate in Hawaii and with the Bureau of Vital Statistics of the Territory of Hawaii was admitted in evidence as Respondent's Exhibit No. 5, marked and ordered filed.

Memorandum containing figures on the estimate of dual citizens of Japanese ancestry in the Territory of Hawaii as of July 1, 1941, was admitted in evidence as Respondent's Exhibit No. 6, marked and ordered filed.

Translation of Japanese law on Japanese citizenship of persons of Japanese ancestry born outside of Japan was admitted in evidence as Respondent's Exhibit No. 7, marked and ordered filed.

Article appearing in the Honolulu Star-Bulletin under date of November 13, 1943, written by Eugene Burns, Associated Press War Correspondent, on his interview with military experts including Gen. Richardson on the possibility of a second attack on Pearl Harbor, was admitted in evidence as Respondent's Exhibit No. 8-A, marked and ordered filed. [113]

Newspaper clipping from The Sunday Star under date of November 13, 1943, containing an article in which Gen. Richardson is quoted as saying that he believes another attack by the Japanese on Pearl Harbor is likely to occur within the next four months, was admitted in evidence as Respondent's Exhibit #8-B, marked and ordered filed.

Map and legend, showing Central Pacific Area with defense and attack areas, was admitted in evidence as Respondent's Exhibit #9, marked and ordered filed.

Copy of General Orders No. 38, Office of the Military Governor of Hawaii, dated October 14, 1943, was admitted in evidence as Respondent's Exhibit #10, marked and ordered filed.

The Navy's Report dated December 5, 1942 on Pearl Harbor damage caused by Japanese attack on December 7, 1941, together with photographs showing such damage, was admitted in evidence as Respondent's Exhibit #11, marked and ordered filed.

Report of Japanese interned in the Territory of Hawaii from December 7, 1941 to April 10, 1944, was admitted in evidence as Respondent's Exhibit #12, marked and ordered filed.

Stipulation between counsel for the admission in evidence of the testimony of Ingram M. Stainback, Governor of Hawaii, if he were called on behalf of the petitioner herein, was presented to the Court, allowed, and ordered to be placed on file.

Stipulation between counsel for the admission in evidence of the testimony of Samuel B. Kemp, Chief Justice of the Supreme Court, Territory of Hawaii, if he were called on behalf of the petitioner herein, was presented to the Court, allowed, and ordered to be placed on file.

Stipulation between counsel for the admission in evidence of Lt. Gen. Robert C. Richardson, Jr.'s and Admiral Chester W. Nimitz's testimony as given in *ex parte* Duncan, to be applicable to the

period August 20-25, 1942, was presented to the Court, allowed, and ordered to be placed on file.

Summary of Persons Arrested and convicted in the Provost Court for the calendar year 1942 was admitted in evidence as Petitioner's Exhibit "P", marked and ordered filed.

Series of communiques issued by Admiral Nimitz for the period from June 4, 1942 to March 30, 1944, were admitted in evidence as Petitioner's Exhibit "A-1," marked and ordered filed.

List of Provost Court prisoners presently incarcerated was admitted in evidence as Petitioner's Exhibit "Q", marked and ordered filed.

Affidavit of Admiral Nimitz, Commander in Chief, United States Pacific Fleet and Pacific Ocean Areas, giving his opinion that the Territory of Hawaii is still in imminent danger of invasion, that the suspension of the privilege of the writ of habeas corpus as well as martial law in the Territory of Hawaii is necessary, and that the trial, conviction, and sentence of Lloyd C. Duncan was necessary for the prosecution in the Territory of Hawaii of the war against Japan, was admitted in evidence as Respondent's Exhibit #13, marked and ordered filed.

Affidavit of Robert C. Richardson, Jr., Lieut. Gen., United States Army, Commanding General, United States Army Forces, Central Pacific Area, giving his opinion that the Territory of Hawaii is [114] still in imminent danger of invasion, that the suspension of the privilege of the writ of habeas corpus as well as martial law in the Territory of Hawaii is necessary, and that the trial, conviction, and sen-

tence of Lloyd C. Duncan was necessary for the prosecution in the Territory of Hawaii of the war against Japan, was admitted in evidence as Respondent's Exhibit #14, marked and ordered filed.

General Orders No. 4, dated December 7, 1941, was admitted in evidence as Respondent's Exhibit #15, marked and ordered filed.

General Orders of the Military Governor, Territory of Hawaii, published in the Honolulu Advertiser under date of March 10, 1943, was admitted in evidence as Respondent's Exhibit #16, marked and ordered filed.

At 3:40 p.m., both sides having rested their case, argument was had by Mr. Ennis on behalf of the respondent. Argument on behalf of the petitioner was continued to Friday, April 21, 1944 at 10 a.m.

Mr. Ennis submitted memorandum of authorities and moved that the application for a writ of habeas corpus be dismissed as the privilege of the writ of habeas corpus remains suspended.

Said motion was overruled by the Court and an exception allowed the respondent. [115]

From the Minutes of the United States District
Court for the Territory of Hawaii
Friday, April 21, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. Edward J. Ennis, Special Assistant to the Attorney General of the United States, Mr.

G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, Mr. William J. Hughes, Lt. Col. Judge Advocate General's Department, and Mr. Eugene V. Slattery, Lt. Col. Office of the Military Governor. This case was called for argument.

At 9:45 a.m., argument was had by Mr. Botts on behalf of the petitioner.

Motion by Mr. Ennis to amend the stipulation filed on April 20, 1944 as to Paragraph II, relating to the testimony of Lieut. Gen. Richardson and Admiral Nimitz was granted by the Court, an amended stipulation to be filed.

At 11:10 a.m., further argument was had by Mr. Ennis, and at 11:40 a.m., closing argument was had by Mr. Patterson.

At 12:07 p.m., this case having been submitted, the Court ruled that the writ of habeas corpus heretofore issued herein shall be made permanent and ordered the petitioner discharged from custody. The Court stated that he will file a written opinion to that effect later.

Exceptions were noted to the Court's ruling and notice of appeals pursuant to Rule No. 124 of this court was given.

Upon request of Mr. Ennis, the respondent was allowed ninety days within which to perfect an appeal. [116]

From the Minutes of the United States District
Court for the Territory of Hawaii
Thursday, May 4, 1944

[Title of Court and Cause.]

On this day came Mr. E. J. Botts and Mr. Fred Patterson, counsel for the petitioner herein, and also came Mr. G. D. Crozier and Mr. Edward A. Towse, United States District Attorney and Assistant United States District Attorney, respectively, for the respondent herein. This case was called for entry of judgment.

Form of Judgment was presented to the Court, was thereafter signed and ordered to be placed on file.

Order on Taking Appeal, signed by the Judges of this court, which suspended, for the purpose of perfecting the appeal in this cause, the operation of Rules No. 124 and No. 126 of this court, was presented to the Court and ordered to be placed on file.

The Judgment reads as follows:

[Judgment set out in full at page 92.]

The Order on Taking Appeal reads as follows:

[Order on Taking Appeal set out in full at page 93.] [117]

Excerpt from Proceedings Held in the Matter of
the Application of Harry E. White for Writ of
Habeas Corpus, on April 18, 1944, at 2:30 P.M.,
Before Hon. J. Frank McLaughlin, Judge.

(The Court signs order returnable at 3:15 p.m.,
April 18, 1944)

Mr. Ennis: As Attorneys for the Provost Marshal, your Honor, if it would meet your Honor's approval we would stipulate that the writ is deemed served, and we will produce the prisoner in response to the writ.

The Court: Yes.

Mr. Patterson: He is present.

(Mr. Harry E. White enters the chambers)

The Court: You are Harry E. White?

Mr. White: Yes.

The Court: Sit down. The record may show that the applicant has been produced by the Provost Marshal and his Attorneys in response to the writ. And the Petitioner is now in the custody of the Court. (To a Police Officer) I don't know whom you represent, but you are relieved of the responsibility.

(Signed) ALBERT GRAIN

Official Court Reporter [119]

[Title of District Court and Cause.]

EXCERPT

From the above-entitled matter, held in the Judge's Chambers, U. S. District Court, Honolulu, T. H., on April 18, 1944, at 2:30 o'clock p. m.,

Before

Hon. J. Frank McLaughlin, Judge

Mr. Ennis: I'd like to also stipulate, your Honor, that the answer and return to the order to

show cause be deemed the answer and return to the writ.

Mr. Patterson: And the traverse to your answer.

Mr. Ennis:—Be deemed as an answer to the writ, as well as the answer to show cause.

Mr. Patterson: We agree to that.

The Court: Very well. [120]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows:

That I am the Official Court Reporter of the above-named Court;

That the foregoing is a true and correct transcript of excerpt in Habeas Corpus No. 300, in the matter of the application of Harry E. White, for a writ of habeas corpus, held in the Judge's Chambers, above-named Court, on April 18, 1944;

That same was taken by me on a shorthand machine and transcribed from my notes.

ALBERT GRAIN

May 8, 1944 [121]

TESTIMONY FROM HABEAS CORPUS No.
298—CASE OF LLOYD C. DUNCAN, HELD
IN THE U. S. DISTRICT COURT, HONO-
LULU, T. H., BEFORE THE

HON. DELBERT E. METZGER

April 5, 1944	Hon. Harry Steiner
April 5, 1944	Hon. Albert M. Cristy
April 6, 1944	Gustaf K. Sproat
April 7, 1944	Hon. Ingram M. Stainback
April 7, 1944	Capt. J. Frank Wickhem
April 8, 1944	Capt. J. Frank Wickhem
April 8, 1944	Robert K. Murakami
April 11, 1944	Robert K. Murakami
April 11, 1944	Lt. Gen. Robert C. Richardson, Jr.
April 11, 1944	Admiral Chester W. Nimitz

[122]

HON. HARRY STEINER,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. What is your name?

A. Harry Steiner.

Q. Where were you born? A. Honolulu.

Q. What is your position at the present time?

A. District Magistrate of Honolulu. First District Magistrate.

(Testimony of Hon. Harry Steiner.)

Q. How old are you? A. Fifty-three.

Q. Were you in the service during the last war?
[123]

A. I was.

Q. What branch of the service?

A. Infantry.

Q. Judge, how long have you been District Magistrate in Honolulu? A. Twenty years.

Q. Twenty years? Where did you go to school?

A. Punahou and Yale University.

Q. Graduate of Yale Law School?

A. Yale Law School and Yale College.

Q. Does your family live here?

A. That's right.

Q. And your father lives here?

A. He was until the time of his death.

Q. When did your father come here, by the way?

A. In '82.

Q. The Police Court of Honolulu is one of the busiest courts in this Territory, is it not?

A. It is.

Q. At my request, had you compiled statistics of cases tried in the Police Courts of Honolulu?

A. Yes, I have.

Q. Do you have those with you, Judge?

A. I have them summarized.

Q. I see. You have a memorandum of those cases? A. Yes, I have. [124]

Q. Will you please give us the number of cases that have been tried in the District Court since the war?

(Testimony of Hon. Harry Steiner.)

A. Since the war there have been 69,582 criminal cases, and 2,641 civil. That makes about 72,000 matters. That is all matters. I might state that does not include all the commitments to the Territorial Hospital that I left out.

Q. In addition to your duties as a trial court trying civil and criminal cases, you also have certain statutory duties in regard to the insane, do you not?

A. Yes.

Q. Those cases are not included in the statistics?

A. I have left those out.

Q. The 72,000 just comprises actual civil and criminal cases tried?

A. Yes. I included the forfeitures.

Q. Yes, forfeitures.

A. Yes, that's included.

Q. That's a criminal case?

A. It's a criminal case.

Q. What kind of cases do you try down there, Judge?

A. Misdemeanors on the criminal side, where the punishment may be anywhere up to a thousand dollars or imprisonment up to one year, or imprisonment and fine. In the civil side, jurisdiction up to \$500 in practically all cases. And in certain matters which have been going on for the last six months, involving the landlord, no limit; we have original [125] exclusive jurisdiction between landlord and tenant matters.

Q. Judge, have you got those figures broken down by years?

A. Yes, I have.

(Testimony of Hon. Harry Steiner.)

Q. Could you give us the figures by years?

A. In 1942—these are civil matters—in 1942 there were tried 969 civil cases. In 1943, there were 1,240 cases. And the first three months of this year there have been tried 432, which makes a total of 2,641 civil cases. And as to criminal cases, in 1942, 15,011 tried. In 1943, 43,775. And in the first three months of this year, 11,796—total of 69,582 criminal matters.

Q. Now Judge, you were on the bench at the outbreak of war, were you not? A. I was.

Q. Just state briefly what happened to your Court down there?

A. Well, Monday morning we cleared the calendar of the cases that were then to be tried, and at eleven o'clock the order came up from the Military Governor that martial law had been declared.

Q. The Monday following the blitz?

A. Yes, at eleven o'clock on the 8th. And from that time on we ceased to function as to all new criminal matters. We were allowed to finish up the pending criminal cases, and we were allowed to continue with civil matters, in most matters [126] except cases involving the armed personnel and employees working on Government projects.

Q. Where did the Provost Court sit?

A. In the District Court. They used the Court-house, the equipment, and—

Q. The Court and its facilities?

A. Everything. And we sat with the Provost

(Testimony of Hon. Harry Steiner.)

Judges and helped them merely in an advisory capacity.

Q. How long did this advisory business continue?

A. To my recollection up to September of 1942.

Q. Then there was a relaxation?

A. Upon military order; yes, there was a relaxation.

Q. And then, after March 10th, 1943, you resumed complete jurisdiction, did you not?

A. Not complete.

Q. Not complete? A. No.

Q. Why was it not complete?

A. Well, we haven't taken over matters of blackout.

Q. Oh, yes. There are defense act regulations.

A. And there are certain individuals, like utility employees, who have been frozen by the Military Governor, and we have no jurisdiction over those individuals.

Q. Oh, you mean you don't try offenses involving the violation of military orders? You don't try any of those cases?

A. That's right. And no offenses involving the utility [127] employees on their work.

Q. You mean to say if a fellow that works for the Hawaiian Electric gets in a fight, you don't try that kind of a case?

A. On their job. Certain individuals, for example, the milk employees, the dairymen, we don't try those.

(Testimony of Hon. Harry Steiner.)

Q. The milkmen?

A. So I understand. We never have any cases like that.

Q. Do you know the basis for that?

A. No. I haven't a copy of that order, of the March order.

Q. Well, we needn't bother now, Judge. While you were down there in your advisory capacity, did you have occasion to see a great many of those Provost Court cases being tried?

A. Yes.

Q. Were there any cases that you ever saw down there that were being tried that the District Court could not have handled had it been permitted to do so?

A. No, I know of none.

Q. Judge Steiner, you have seen a great many of the phases of the life of this community during your 20 years on the bench, have you not, down there in the Police Court?

A. Yes, I have.

Q. What have you to say as to the conduct of this community since the outbreak of war up to the present time?

Mr. Ennis: Objection. It is calling for a general conclusion, your Honor. It has no relevancy to the issue here that I can see.

The Court: Overruled. [128]

Mr. Ennis: Exception.

The Witness: May I go ahead?

The Court: Yes.

A. The conduct has been good, I would say, the general characterization has been very good.

(Testimony of Hon. Harry Steiner.)

Q. Have you ever seen anything that is unusual or extraordinary other than the fact that there are a lot of people here and a lot of business going on?

A. Nothing whatsoever.

Q. How about the character of the cases that come before your Court, are they any different in any degree than those prior to the war?

A. Just about the same.

Q. Well, have you ever noticed any kind of a case down there in the Provost Court which the District Court of Honolulu could not have handled fully and adequately?

A. No. I know of no cases that we could have not handled.

Q. How many Judges were there at the outbreak of war? A. Three.

Q. Who were they?

A. Judge Griffith Wight, and Judge Leslie P. Scott and myself, with a fourth as temporary in case of absence or disqualification of one of the regular three Judges.

Q. Wight and Scott were both ex-Army officers, too, in the last war like yourself?

A. They are, that's right, that's right. [129]

Q. You were perfectly ready to go ahead and try all the cases that were brought before the Court, were you not? A. That's right.

Q. And you would have done so but for the imposition of military orders? A. Yes.

Mr. Anthony: That's all.

(Testimony of Hon. Harry Steiner.)

By the Court:

Q. May I ask, who decided what cases should be brought before your Court or before the Provost Court? A. The Military Governor.

Q. As to each case individually or were they general orders?

A. By a general order. And they had down there in the District Court a coordinator, so that any particular case they could have taken the case from the District Court and given it to the military.

Q. Well, this coordinator, then, as I take it, had or exercised supervision over every criminal case that originated, and he routed it either to your Court or to the Provost Court, according to his mind?

A. That's right.

Q. That's it? And that officer was appointed by whom? A. By the Military Governor.

The Court: All right.

Mr. Anthony: Did you finish, your Honor?

The Court: Yes. [130]

Q. Do you try cases of assault and battery that occur on military reservations in your Court?

A. We do.

Q. You have concurrent jurisdiction with this Court?

A. We have. But that's civilian personnel.

Q. That's what I mean, where the defendant is a civilian. That's all.

Cross Examination

By Mr. Ennis:

Q. Were there not cases tried before the Provost

(Testimony of Hon. Harry Steimer.)

Courts for violation of military orders which were not violations of the laws of the Territory, of the County or City? A. That is correct.

Q. Then there were cases tried before the Provost Courts which could not be tried by your Court in the sense that the actions were not offenses under the civil laws which you administered?

A. That's right. But, as I remember, to end the action the local Governor's power is so sweeping as to internal security, I could think of no subject that he couldn't have covered by some local law; but they were actually cases that were not covered, that we have no jurisdiction over except local laws; we have no jurisdiction over the Military Governor's orders, or Federal.

Q. But there was conduct and actions of civilians which were violations of military orders which were not also violations of any law you administered, or of any regulations which the Governor had, in fact, issued under the "M-Day" Bill, apart from what he might have issued? [131]

A. Yes.

Q. There were such cases? A. Yes.

Q. Tried in the Provost Court?

A. That's right.

Mr. Ennis: That's all, Judge. Thank you.

(Witness excused.)

The Court: Do you have another witness at hand?

Mr. Anthony: Yes, I have two short witnesses that I would like to get rid of; they've been hanging around.

HON. ALBERT M. CRISTY,

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Albert M. Cristy.

Q. What is your present position, Judge?

A. I am Second Judge of the Circuit Court, First Judicial Circuit.

Q. How long have you held that position?

A. Since the latter part of October, 1926.

Q. Where were you born, Judge?

A. Hudson, Ohio, near Akron.

Q. And you went to the public schools and then to Brown University? [132]

A. I went to the grammar school in Cleveland and the high school in Providence, Rhode Island, and Brown University and Harvard Law School.

Q. Have you ever held any other office in the Territory other than Judge?

A. I was Deputy City and County Attorney from 1915 until 1919.

Q. And you are now Judge of the Circuit Court of the First Circuit? A. Yes.

Q. Judge, were you here at the outbreak of the war?

A. What do you mean by the outbreak of— with Japan?

Q. On December 7th?

A. I have been here; I was in town, yes. I

(Testimony of Hon. Albert M. Cristy.)

have been constantly in the Territory except for one trip in 1930.

Q. You have been here since the outbreak of war, you have been here up to date?

A. Constantly.

Q. Judge, immediately after the outbreak of war, will you state briefly what happened so far as your Court was concerned, for the benefit of this record?

A. Well, the exact details as to dates and times and exactness—but I can say that on the morning after the so-called blitz the Judges assembled in Court with the Chief Justice and posted a notice of suspension of business until things were organized. Shortly after that, and during that week or the [133] following week, several conferences were had with officers delegated from the Military Governor's Office as to the contribution that the Judges of the Court could make toward assisting, and anything that would be necessary in curtailing their activity for a time being until things were settled down, or acting as assistants in any capacity that their judicial qualifications permitted. And suggestions were made as to how the Judges could conduct their business, both as to continuances and as to setting of cases so as to make the least disturbance or necessity for popular gathering around the Courthouse, but carry on the business of the Court. We got nowhere for quite awhile.

Q. The Courts were initially closed, you recall that, by military order?

(Testimony of Hon. Albert M. Cristy.)

A. Well, it was both by military order and an order of the Chief Justice of the Supreme Court, acting in cooperation with the suggestions of the military.

Q. Judge, what kind of cases do you handle there, or have you handled, briefly?

A. Well, practically everything in the roster of the Court over there.

Q. That's a general Court of record?

A. It is a general Court of record, and at the particular time of the blitz I think that my calendar was the Probate and Equity calendar. I wouldn't be positive on that, as to recollection, but I think that that was so. But by reason of the illness of one of the Judges, I was taking on most anything that was [134] available.

Q. You have handled criminal cases, civil cases and jury trials?

A. Oh, last year the criminal calendar was in my division, and we have rotated calendars of all the divisions, all work, regularly.

Q. What have you to say as to your observation on the kind of cases that are coming before the Court now as compared with prior to the war, we'll say?

A. The same type of cases, perhaps with an emphasis on sex cases more than usual in number on the criminal side of the Court. And the other division, the usual civil actions, probate, equity, land court.

(Testimony of Hon. Albert M. Cristy.)

Q. Judge, is there any reason that you can think of why any criminal case could not be tried in the Courts of this Territory, if they had jurisdiction?

A. Well, on the contrary, the division last year, as I told you, was the criminal division that my division handled, and we were at all times available not only for the usual calendar arrangements but were able and ready and had the time and the personnel to put on any emergency trial that would be needed. I speak of emergency trial, as we have attempted throughout the year to adjust the trials so that the witnesses engaged in the war effort or being of military personnel or in any way having a reasonable excuse could be met and their attendance adjusted so as to make it as little inconvenient for their attendance as possible; or to advance cases so as to obtain the testimony of [135] people whose activity ought to be considered. In other words, the calendar was such that, although we had a year practically of very little trial from December, 1941, until the fall of 1942, the criminal calendar which I took over in January, 1942, was what we would call normally a heavy calendar in the sense that there had been an accumulation. But even with that accumulation there was at no time and difficulty of a Prosecutor setting a special emergency trial to accommodate witnesses who might need to be elsewhere later on, or might be lost if their testimony weren't taken.

Q. Judge, is there any reason why the Circuit

(Testimony of Hon. Albert M. Cristy.)

Court should not have conducted its business within a few weeks after the outbreak of war?

A. I know of none.

Q. Is there anything in the community, that of order or disorder in the community, that prevented that in any way?

A. I heard of no disorder or none was called to the Court's attention that would have hindered the Court from conducting any trial either jury or jury waived.

Q. Well, is it fair to say that the activity of the Circuit Courts was curtailed only by reason of the military order? A. That is all.

Q. And there was no necessity that you know of that required the curtailment of those activities?

A. On the contrary, I was one of the Judges picked out as the liaison officer, so to speak, of the Court to attempt to [136] find ways and means to activate business in a more normal way.

Q. Judge, you have observed the people of this community over the past two years and before that. What have you to say of the present conduct of this community?

Mr. Ennis: Objectionable; it is too general, your Honor. I don't know what Counsel means by that question.

The Court: Well, it isn't clear to me.

Mr. Anthony: I'll try to make it a little more specific.

Q. What have you to say as to the order or dis-

(Testimony of Hon. Albert M. Cristy.)

order or law-abidingness or unlawfulness or lawlessness of this community at the present time?

A. Well, I have seen nothing but the ordinary conduct on the street and in the places where people congregate that is affected by the restrictions of various sorts that have been necessary restrictions of conduct. But as to orderliness, I have found nothing out of the way in any part of the community that I have contacted.

Q. Do you know any reason for the trial of civilians in military courts for offenses that don't actually affect the security of the military establishments?

Mr. Ennis: Your Honor, I object on the grounds that the witness is not qualified as one who might possess the reasons why that is necessary. Obviously, the witness has not been qualified as a military expert.

Mr. Anthony: I am excluding the military cases.

The Court: Read that question back. [137]

(The Reporter read the last question.)

Mr. Anthony: On crimes against the laws of war.

The Court: Overruled.

Mr. Ennis: Exception.

A. Well, we are—including myself and the other Judges that are over there—in the business of sitting as Judges of trials of civilians that are charged with offenses against the general laws, and I see no—I had contact with no reason why we

(Testimony of Hon. Albert M. Cristy.)

shouldn't be able to function in this community on those kind of cases. And I will add this, that in the conference with the military, taken shortly after the blitz, it was pointed out by me personally to the officer who was in conference that all of the Judges were ready and willing at any intimation from the military establishment that any phase of a case that might come before our Courts that needed to be delayed, or for any other reason had a military aspect to it, that we would be ready and willing and alert to grant continuance, postponement, and investigations of those things, so that there would be no hampering in any way from the Courts of the Territory, that we presided over anything affecting the military necessities, if that is an answer to your question.

Q. Judge, do you entertain a layman's view on whether or not we are in imminent danger of invasion?

A. I have been trying to find out what they mean by invasion. As a lawyer rather than a layman, the question of invasion doesn't include in my dictionary a sporadic attack or a threat of attack or a desire to attack. [138]

Mr. Ennis: I object to that. The Judge is not qualified to testify as to what American law is. I think no witness is.

The Court: Not qualified as to what?

Mr. Ennis: To testify on the question of American law.

(Testimony of Hon. Albert M. Cristy.)

Mr. Anthony: He's talking about the dictionary.

Mr. Ennis: The Judge is answering a question as to what he thinks as a lawyer. Now, I think what American law is, distinguished from foreign law, is a question for us to argue on, not for us to take testimony on.

Mr. Anthony: I don't propose to take testimony on that.

The Witness: I was trying to clarify it. I haven't completed the answer, Mr. Ennis. I'm trying to clarify the background as to how to answer Mr. Anthony's question as a layman on the threat of invasion. I had nothing come to my attention ever since I've been here, and particularly since the blitz, to indicate that there has been anything that comes within the category of an invasion. But there have been, undoubtedly, for awhile threats of raids. Just how far the planes can fly now for raids from any bases, I am not militarily informed on.

Mr. Ennis: Your statement is as a layman, not as one militarily informed?

The Witness: As a layman who keeps pretty closely in touch with what the military inform me on in their communiques, which I take on their face value until shown the contrary.

Mr. Anthony: That is all. [139]

Cross Examination

By Mr. Ennis:

Q. Judge, I understood you to say that you per-

(Testimony of Hon. Albert M. Cristy.)

sonally knew of no necessity why civilian offenses should not be tried in your Court?

A. There has been nothing hindering it, from our angle, no, sir.

Q. Now, you are not acquainted, I take it, with the military information or the information in the hands of the military authorities here on any enemy activities, either present or potential, in this Territory?

A. Well, that goes without saying that the military have not taken me into their confidence or shown me their secret files. But I was speaking in my answer about offenses being charged against civilians violating civilian laws. There has been nothing in the way of trying these cases in any court that I have had contact with, and I have had contact with all the Circuit Courts in this particular city, and with the Judges of the District Court, during the full two years.

Q. Your Court does not have jurisdiction to try offenses by civilians in the form of breaches of military orders, is that correct?

A. Well, the question there comes in, as I understand it, as I understand the law, Mr. Ennis, that those matters should be before the Federal Court and not before the Territorial Court.

Q. But your Court does not have jurisdiction to try those [140] offenses by civilians?

A. That is a matter of law, correct. Our Court would handle only the offenses against the Territorial laws committed any place within the Ter-

(Testimony of Hon. Albert M. Cristy.)

ritory, by an agreement between military and the Courts and the prosecuting officials ever since 1915, since I have been here. Military personnel violating those laws have been turned over to the military for trial, but civilians have been tried in the civilian courts. But as to violating regulations of the military orders by civilians, my understanding of the law is—and I am here to be corrected, or any time—that those are matters before the Federal Court unless they have been taken away by some other method of usurpation.

Mr. Ennis: That is all, Judge Cristy. Thank you.

Mr. Anthony: That is all. Thank you very much.

○ (Witness excused.) [141]

GUSTAF K. SPROAT.

a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please? A. Gus K. Sproat.

Q. Sorry I kept you waiting. A. Yes, sir.

Q. You are Clerk of the Supreme Court of the Territory? A. Yes, I am.

Q. How long have you held that position?

A. Since January 26, 1931.

(Testimony of Gustaf K. Sproat.)

Q. At my request, have you examined the records of your office and prepared—— A. Yes.

Q. —a statement relative to the number of cases in that Court and other Courts?

A. Yes.

Q. Do you have that information with you?

[142]

A. I have those figures with me.

Q. May I see them, please? (Witness hands Mr. Anthony several sheets of paper.) Do you have copies of these?

A. I have office copies, but you may copy those.

Q. These sheets that you have prepared, what do they consist of, Mr. Sproat?

A. They consist of the number of cases coming before the Circuit and Supreme Courts of the Territory for the last five-year period, beginning in 1939 and ending December 31, 1943.

Q. There are how many Circuit Courts? There were five?

A. There were five; there are four now.

Q. There is a Court of Record on each of the outside islands? A. Yes.

Q. That's where this Court sits, that is the First Circuit? A. Yes.

Q. Do you have the record of the civil and criminal cases in the Circuit Courts as well as the Supreme Court of the Territory?

A. Yes, I have.

Mr. Anthony: We offer this in evidence, if your Honor please.

(Testimony of Gustaf K. Sproat.)

The Court: Let's see what it shows.

Mr. Anthony: It shows, your Honor, that the Courts have been open, doing their business.

The Court: Well, outside of that discussion, what actually does it show there? [143]

Q. How many cases were in the Supreme Court during that period, in the year 1939, Mr. Sproat?

A. A total of 35 cases. That includes civil and criminal.

Q. And how about the rest of the years?

A. Forty-one for 1940; ten for 1941; twenty for 1942; twenty-four for 1943. That takes in a total of 130 over the five-year period.

Q. Now in the Circuit Courts, how many cases have you had?

A. We have had civil matters, 11,135 cases; probate, 9,371; criminal, 2,669; juvenile and bastardy, 5,533; making a grand total of all courts of 28,838 cases.

Q. You have that broken down by years?

A. I have those broken down by years.

Mr. Anthony: We offer this in evidence, your Honor please.

The Court: Received in evidence as Exhibit "H".

(Petitioner's Exhibit "H" was received in evidence.)

[Petitioner's Exhibit H is set out in full as Petitioner's Exhibit K, starting at page 406 of this printed record.]

Mr. Anthony: That is all.

Mr. Ennis: No cross-examination.

(Witness excused.)

Honolulu, T. H.

April 7, 1944

9:00 o'clock, a. m.

(The hearing continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, called for further hearing.

Mr. Anthony: Ready for the Petitioner. May we proceed, your Honor?

The Court: You may proceed.

Mr. Anthony: Governor Stainback, will you take the stand, please?

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, a witness in behalf of the Petitioner, being duly sworn, testified as follows:

Direct Examination

By Mr. Anthony:

Q. Your name, please?

A. Ingram M. Stainback.

Q. At the present time you are the Governor of the Territory of Hawaii? A. I am.

Q. Governor, where were you born?

A. Somerville, Tennessee.

Q. Did you go to school in Tennessee? [145]

A. Yes.

Q. And where did you go to college?

(Testimony of Hon. Ingram M. Stainback.)

A. Princeton and the University of Chicago Law School.

Q. What year did you come to the Territory of Hawaii? A. 1912.

Q. And you have resided in the Territory ever since 1912? A. I have.

Q. Have you ever held any Federal office, any office other than Governor?

A. Yes, quite a number.

Q. What are those offices, Governor?

A. Attorney General of the Territory, U. S. Attorney for the District of Hawaii, U. S. Federal Judge; besides, I have been on a number of commissions, public utility commissions—several others.

Q. Under the Territorial Government?

A. Yes.

Q. In between—

The Court: You were in the Army also, were you not?

A. Yes. Yes, I was in the last war for two years, but I still resided in the Territory.

Q. You were an officer in the U. S. Army during the last war? A. Yes, I was.

Q. During the times when you did not hold public office, [146] did you practice law in this Territory? A. I did.

Q. And that involved a general practice of law?

A. A general practice of law, yes, mostly civil, very little criminal.

(Testimony of Hon. Ingram M. Stainback.)

Q. Do you believe that you are quite familiar with the affairs of this Territory?

A. I think so.

Q. You, of course, were here on December 7, 1941?

A. Yes, I was Federal Judge at that time.

Q. You were familiar with the conduct of the community immediately following December 7th and the state of public order and disorder—are you?

A. I think so.

Q. Governor, was there anything that prevented the courts from functioning in accordance with law immediately following the attack of December 7, 1941?

A. No. As a matter of fact, I did hold Federal Court on December 8th in the adjoining room.

Q. Immediately after the attack, you recall the military authorities took over portions of Lolani Palace, do you recall that?

A. Yes.

Q. Do you recall what occurred in regard to the placing of barbed wire around Government buildings? [147]

A. Yes, barbed wire was placed around there and—

Q. The City Hall?

A. City Hall, I believe; I am not sure; I had no occasion to go over there. This building was barricaded with sand bags and the front doors closed, and we had to come in the back way for several months; machine guns were placed back in this corridor back there, sand bags erected.

(Testimony of Hon. Ingram M. Stainback.)

Q. What have you to say as to the conduct of the population during the period following the outbreak of war, the civil population?

A. I would say it was admirable from every standpoint; the civil population gave a wonderful account of itself, both on the 7th and subsequent to; the various organizations that had prepared for attack and everybody seemed to be most intent on doing what they could to protect this Territory, and the Government as a whole, the United States, I should say.

Q. Governor, when were you appointed to your present office?

A. The latter part of July, 23rd, I think; I took office August 17, 1942.

Q. Since you were appointed Governor, can you tell the Court how the various departments of the Territorial Government have functioned in a general way?

A. Well, I would say normally, they exercised their normal functions. Of course, we have adopted some war regulations, [148] due to the fact that we are under war conditions, like food importation and raising of food, the fact that the Government has gone into the raising of food which ordinarily, of course, wouldn't occur; we have exercised a number of functions under what we call the "M-Day Bill." Otherwise, I should say we proceeded as under peacetime.

Q. The Hawaii Defense Act granted broad

(Testimony of Hon. Ingram M. Stainback.)

powers to the Governor, as you know. Is that not correct? A. Yes.

Q. Do you know of any other piece of legislation in the United States or any state of the United States, or in any English-speaking country, that grants any broader powers than the Hawaii Defense Acts grants to the Chief Executive?

A. I don't know of any. Of course, I couldn't say that I have examined all the legislation of all the states and countries—but I personally don't know of any.

Q. Will you briefly state the operations of the Office of Civilian Defense in this Territory, what briefly has been done in that regard?

A. Well, it is what the name designates. We have provided for the care and protection of civilians during the time of emergency. They have set up first aid stations and ambulance corps, blood banks, and matter of that kind to meet any casualties that might result from bombs or attack of any kind.

Q. An elaborate system of air raid wardens?

[149]

A. An elaborate system of air raid wardens, fire wardens and fire companies, volunteer companies, first aid volunteers, and a great many matters relating to the protection of the civilian community. We have even set up first aid hospitals, and some of these hospitals we have used—because of the pressure, we are using them now not as first aid but as general civilian hospitals.

(Testimony of Hon. Ingram M. Stainback.)

Q. Governor, do you recall, do you have any recollection of the approximate number of people engaged in O.C.D. activities? A. Now or——

Q. At the present time.

A. I think I have the figures; some 700 or 800, I think; 803 as of March, 1944. In November, 1942, we had 2,513.

Q. Are they full-time employees, Governor?

A. Yes, I think that is correct.

Q. In addition to that, there is a large number of volunteer workers for the O.C.D., is that not a fact?

A. Oh, yes, quite a number. I wouldn't be too positive as to whether all those people are full-time employees. I have no data to show whether they are all full-time employees.

Q. What was the budget of the O.C.D. when you took office, Governor?

A. Well, in November, 1942, is when I have the statement; that was three months after I took office; a little over two months. It was \$738,441.13 per month. [150]

Q. What is it at the present time?

A. March, 1944, \$193,349.78. The only increase has been in certain emergency medical services, due to taking over certain tubercular patients. Outside of that, there has been a decrease in every department.

Q. What has been the progress of the O.C.D. organization in regard to the expenditure of funds?

(Testimony of Hon. Ingram M. Stainback.)

In which direction has that gone since your term of office?

A. Well, it has gone down, I'd say, some 74 percent.

Q. And what is the occasion for that?

A. Well, because we don't feel that there is justification for keeping up the expenditures on a great many lines. For instance, we are doing away now—we haven't yet but we are going to do away with these first aid stations, and we will have mobile units, volunteer units. I might add that practically all this reduction was done under and with the advice of Dr. Bayer, who is down here to survey this. He is head of the O.C.D. medical department—he was; he is also connected with the Public Health of New York State.

Q. That's Colonel Bayer attached to the Public Health Service?

A. Yes, Colonel Bayer, who is a Colonel in the O.C.D.

Q. Have you had occasion during your term of office to visit the other islands of this group, Governor?

A. Yes, I visited all of them at least once or twice or [151] more, several times, I think, with the exception of Lanāi and one of the small islands; but Hawaii, Kauai, Maui, Molokai, I visited.

Q. From time to time you confer with members of the Armed Forces in regard to the state of this Territory?

A. Yes, yes, we have to.

Q. On preparedness?

(Testimony of Hon. Ingram M. Stainback.)

A. Yes, hardly a week passes that there isn't some question that has a bearing on the Armed Forces. Last week there was the question of water on Kauai; we had to divert certain funds to increase water supply in certain districts because of the presence of large numbers of Armed Forces. I have to keep familiar with that. On Maui, the President of the Board of Health is now over there—at least was the other day—in connection with certain diseases brought in by Marines. And in my duties as Governor, naturally I've got to be thoroughly familiar with the Armed Forces here where they are.

Q. Do you obtain any information in regard to the state of defense of these islands?

A. I think I know very thoroughly the state of defense of this island. I have visited most every—I won't say dugout, but the principal parts.

Q. Installations?

A. Installations. I have, on this island and the other islands, watched the operations of the air defense system, that is, what you might term the Radar. I have talked with [152] many many officers, both Army and Navy, on various questions involving the set-up here, to get their opinions on various problems, not always in an official way. In fact, we very seldom meet that something isn't discussed or brought out with reference to either military or Navy—maybe not on any particular installation or matters of that sort. I have talked with high Army officers and low officers on questions of

(Testimony of Hon. Ingram M. Stainback.)

the possibility of invasion and matters of that sort in great detail.

Q. Governor, having in mind your statutory duties under Section 67 of the Hawaiian Organic Act, do you have an opinion whether or not Hawaii is now in imminent danger of invasion?

A. Yes, I have an opinion.

Q. Will you please state your best judgment on that question?

A. I do not think it is in imminent danger of invasion.

Q. Having in mind your duties as Chief Executive under Section 67 of the Hawaiian Organic Act, do you have an opinion whether or not the public safety requires the suspension of the privilege of the Writ of Habeas Corpus?

A. I do not think so.

Q. Will you give us your best judgment whether or not any military necessity exists for the trial of civilians in provost courts for crimes and offenses other than crimes against the laws of war? [153]

Mr. Ennis: I object, your Honor, on the grounds that I don't believe the Governor is qualified to answer the question based upon military necessity.

Mr. Anthony: If the Court please—

The Court: Well, he's asking for his opinion based upon his knowledge and his responsibility as Chief Executive of the Territory. I think that that shows a sufficient qualification to have and express an opinion on that subject.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Well, I'd like to make my point clear, your Honor. I thought the prior questions as not objectionable because they were addressed to the Governor's statutory duties under Section 67 of the Organic Act, his view on what the public safety requires and the suspension of the privilege of the writ, and his view as to whether there is an imminent danger of invasion. But the last question that Mr. Anthony asked was, whether in his opinion military necessity required provost courts. Now, there is nothing in Section 67 of the Organic Act which bears on that specific question, and I think that, including in the question the phrase whether in his view military necessity required it, goes beyond the qualifications of the Chief Executive of the Territory.

Mr. Anthony: Your Honor, this will get us on an argument on the question of law, which later will be addressed to this Court, namely, whether or not Mr. Ennis' idea of how martial law operates is correct, or whether the Petitioner's idea is correct. Our view is that the Chief Executive, in truth and [154] in fact and in law, is the Chief Administrator, if I may use that phrase, of martial law when it is properly operated. I concede, that is not the way it is being done at present, but if any view of the law is correct, then it is important to ascertain from the Chief Executive whether or not any necessity exists for the trial of civilians in military tribunals.

The Court: Objection overruled.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Exception.

The Witness: May I have the question?

(The Reporter read the last question.)

A. I know of no reason, military or otherwise, why they should be tried in provost courts.

By Mr. Anthony:

Q. Governor, you have given us your best executive judgment on whether the Territory is in imminent danger of invasion and whether the public safety now requires the suspension of the privilege of the Writ of Habeas Corpus, and your answer has been that it does not and that Hawaii is not in imminent danger of invasion. Will you please give us your best judgment as to the answer to those questions during the year 1943?

A. I do not think it was in any imminent danger of invasion during the year 1943. I would say, subsequent to Midway, in 1942, that we could never call this Territory in imminent danger of invasion. I understand the word "imminent" means about to occur immediately. [155]

Q. That's a matter for the Court.

A. Yes. So under that interpretation I certainly have not felt, since I have been Governor, that we have ever had any imminent danger of invasion.

Q. Now, in your judgment did the public safety require the suspension of the privilege of the writ of Habeas Corpus during the year 1943?

A. No.

(Testimony of Hon. Ingram M. Stainback.)

Q. Governor, you have seen from time to time the General Orders issued out of the Office of the Military Governor, have you not?

A. Yes, I think my office is usually furnished a copy, I believe.

Q. At any time since you have been the Chief Executive of this Territory, have any of those orders been submitted to you for approval?

A. No, not to my recollection.

Q. The practice has been to issue those orders without your approval, is that not correct?

A. Yes, that is true.

Q. At any time during your tenure as Chief Executive have you ever been notified in advance of the issuance of any of the General Orders that have been issued out of the Office of the Military Governor?

A. I believe they did issue an order on the chlorination of water; I know, I think we discussed that prior to an order, [156] direction, that I gave that the water be chlorinated. I am not sure they issued an order on that; I believe they did but I am not sure. That was talked over quite at length with General King.

Q. That involves some financial arrangement?

A. Yes, that is a question of who was going to pay the bill and other matters, too.

Q. Governor, are you familiar with the existence of censorship in this Territory?

A. Yes, I am.

(Testimony of Hon. Ingram M. Stainback.)

Q. Do you know whether or not the mails between here and the mainland of the United States are now censored? A. Yes.

Mr. Ennis: Objection. It is irrelevant. May I have the answer stricken, your Honor?

Mr. Anthony: I have no objection to it going out, for Counsel to get in his objection.

The Court: It may be stricken.

Mr. Anthony: I believe it is relevant on the issue of what the public safety requires.

The Court: It is stricken.

Mr. Anthony: I don't hear the Court.

The Court: It is stricken.

Mr. Anthony: I now ask that the witness be permitted to answer the question. I believe it is relevant to the issue as to what the public safety requires. [157]

The Court: The witness answered the question. Upon motion that it be stricken, it was ordered stricken.

Mr. Anthony: And your Honor now sustains an objection to me asking that question, is that the Court's position?

The Court: I don't follow you.

Mr. Anthony: I will ask the question again.

Q. Is there censorship of the mails between Hawaii and the mainland of the United States at the present time?

Mr. Ennis: Objection, on the ground that the answer to that question is irrelevant to the issues in the case, your Honor.

(Testimony of Hon. Ingram M. Stainback.)

The Court: Well, as I understand it, that is the same question that was asked and answered before. It was moved to strike.

Mr. Anthony: That is correct.

The Court: It was moved to strike the answer and the answer was ordered stricken.

Mr. Anthony: Yes, I understand. Maybe I'm a little dull this morning. I understood it was stricken, but for the purpose of Mr. Ennis to get in a proper objection so that the Court could then rule on it, I would like to be heard upon it before your Honor does rule upon it.

The Court: Very well.

Mr. Anthony: May I proceed?

The Court: Yes.

Mr. Anthony: One of the conditions which Mr. Ennis, [158] representing the Government, must comply with in order to maintain his position that Mr. Duncan may be tried in a provost court for a non-military offense is that the public safety requires the suspension of the privilege of the Writ of Habeas Corpus. That is one of the conditions that he must meet. Now, I propose to show by this line of evidence that the public safety may be adequately dealt with by means other than the suspension of the privilege of the Writ of Habeas Corpus and the trial of civilians in these military tribunals. I propose to show that we are a completely regimented community, that there are many other means of controlling the civil population other than the trial and conviction and sentencing of

(Testimony of Hon. Ingram M. Stainback.)
civilians in military tribunals. And on that issue I think the matter of the degree of regimentation, the degree of censorship, is relevant.

Mr. Ennis: If your Honor please, I still don't see the connection between censorship and trying the Petitioner in a provost court. And I don't believe that whether or not the public safety requires suspension of the privilege of the writ can be shown merely by indicating that in some respects unrelated to this case, namely, censorship, that some other means than censorship by the military, if it exists, could be adopted.

The Court: The order to strike stands.

Mr. Anthony: I'd like to make an offer of proof, if the Court please, at this time for the record. [159]

The Court: You may.

Mr. Anthony: I offer to prove that the Territory of Hawaii at this time is under complete censorship covering the mails, radio, telephone, inter-island telephone, and trans-Pacific telephone; that that censorship, so far as the mails are concerned, is a hundred percent censorship, and that intercepts are furnished regularly to the department of the Government in regard to the contents of the mails that are censored.

Mr. Ennis: I object to the proof being received in evidence, your Honor, as irrelevant to the issues.

The Court: The offer is denied.

Mr. Anthony: May we have an exception, your Honor?

The Court: Yes.

(Testimony of Hon. Ingram M. Stainback.)

By Mr. Anthony:

Q. Governor, have the departments of the Federal Government functioned according to law since the time you have been Chief Executive here—civil departments?

A. Yes, to the best of my knowledge.

Q. At any time have you observed any public disorder or commotion or civil strife in this Territory?

A. No, there has been none except as you may refer to the ordinary disorders of peacetime: fights and drunkenness and matters of that sort. There have been no riots or rebellions or anything of that sort. We have the ordinary difficulties that confront the Government in ordinary times [160] of peace, possibly exaggerated a little by a large increase in population.

Q. Have you ever conferred with any of the Commanding Generals of this Territory in regard to the necessity for the continuance of martial law?

A. Yes.

Q. With whom did you confer?

A. General Richardson.

Q. Will you please tell the Court what the substance of that conference was?

A. Well, the first time that you might say I had a formal discussion with him was—I don't remember the date but it was quite some months ago at the General's quarters in Shafter. He invited me out to lunch. I had several questions, including the matter of abolishing martial law entirely. I dis-

(Testimony of Hon. Ingram M. Stainback.)

cussed it in rather general terms, and I believe I left him a memorandum at that time and told him that I'd like for him to consider it. I pointed out that practically 95 percent of the civil government had already been restored, that such other powers as were being exercised here under the so-called military government or martial law could be accomplished in a legal way under the Act of Congress giving the President special powers to declare certain areas defense areas, and orders could be made under the authority of the President, such as prohibiting people or aliens or others from certain areas, and curfew and blackout and various things of that [161] sort; that this power had been sustained by the Supreme Court of the United States in the case of *Hirabayashi*—or maybe I'm a little off there—

Q. *Hirabayashi*. A. What's the name?

Q. *Hirabayashi*.

A. I found, for my own protection as well as for the benefit of the community and protection of officers who were enforcing these laws, that my mind was in a much better way to operate and accomplish everything that he was trying to accomplish now if we proceeded in the Federal Court with the backing of Congress rather than with a vague idea of martial law. The General was very nice and said he would take up that matter.

I again talked about it on January 14th. The General was over to my house for lunch. At that time that came up mainly through his request to

(Testimony of Hon. Ingram M. Stainback.)

use the Territorial Board of Pardons and Pardon on men who had been committed to the Territorial prisons by the military courts. I raised quite a number of questions which I submitted to you before you left the office. I don't believe you answered, so I worked out some answers of my own and gave the General a little memorandum at that time on the question of whether there had been any legal convictions. I said this question will have to be faced some time; we just can't keep people down; some of them have been sentenced for life and some for five years; [162] and the quicker we can raise the question and dispose of it, the better it would be for everybody concerned. The question would be raised some time. And I left the little memorandum with the General and told him I didn't expect him to answer it then but I'd like for him to consider it and go into it. He was very polite and nice and agreeable but I have had no answer on that question.

He did raise then the question of the labor control, and I hadn't discussed control of labor in my agenda, as to what could be done under this Act of Congress. And he said that was one of the most important reasons, I think, to continue martial law, the important reason. I couldn't tell the Court the exact words. There has been adequate control of labor by the War Manpower Commission here, and I felt all along and expressed my opinion that time, that you can't control the water in one half of the barrel by one bunch and the other half by the other.

(Testimony of Hon. Ingram M. Stainback.)

But I believe he stated that possibly some way could be worked out whereby they would give up this control of labor. Of course, under the proclamation labor control was divided. That was one of the matters that was taken up in Washington. The Army was given the control of public utilities' laborers, the dock laborers, on Army and Navy contracts. And he felt that was vitally important to the war effort.

Q. Governor, there has been attached to the return and answer in this cause affidavits by Admiral Nimitz and by [163] General Richardson. Have you examined those affidavits?

A. I have, not too carefully, but I examined them.

Q. Is there anything in your testimony that is inconsistent with the affidavits, in your opinion?

Mr. Ennis: Objection, your Honor, on the grounds that a comparison of the testimony and the affidavits is the proper way to determine that question and not the witness' recollection at this time of both his testimony and the affidavits.

The Court: Sustained.

Mr. Anthony: You may cross examine.

Cross-Examination

By Mr. Ennis:

Q. Governor, on December 7, 1941, you were a Federal Judge of this District? A. I was.

Q. You observed on that day either any of the enemy action in the Territory or any of the results of that enemy action?

(Testimony of Hon. Ingram M. Stainback.)

A. I did. I happened to be in my courtroom over there and came down on a Sunday to do some special work, so I heard the various explosions around about. I went back home about as fast as I could go and got in my car and took my binoculars and went up on the hill towards Kaimuki way to watch Pearl Harbor. I don't know whether I saw much of the enemy action. I could see huge clouds of smoke which I thought were coming [164] from the Dohaney tanks. I didn't know they were coming from our warships. I saw some of the planes. People were all ordered off the streets, and I went back to my home in Kahala at that time. I did see some of the planes.

Q. Some of the enemy planes?

A. Well, it was rather difficult to tell which were enemy and which were ours. I saw some dog fights over toward Koko Head—it looked like it—but it was rather difficult to insure who was who and what was what and what was happening. I can't say that I could give any detailed account of it. Of course, we listened to the radio. I did see some of the results of the fire out here, McCully way.

Q. Did you see subsequently some of the damage that was done in Pearl Harbor?

A. Yes, I saw the ships and the others. I didn't go into Pearl Harbor but it was very apparent as you passed by, the Arizona and the Oklahoma and the various ships that had been sunk.

(Testimony of Hon. Ingram M. Stainback.)

Q. From your observations, did the military forces of the Empire of Japan invade the Territory of Hawaii on that day?

A. I would say they attacked us from the air. My terminology of invasion is to enter into the country, to take possession or to loot it. They certainly were very successful in their attack.

Q. Well, would you state that that attack, Governor, [165] did not constitute an invasion of the Territory?

Mr. Anthony: I object to that as a question of law.

The Court: Sustained.

Mr. Ennis: If the Court please, I have no further cross examination of the Governor, but if the Court would permit I would like to make the Governor our witness on a separate subject and ask him a few questions in order to prevent recalling the Governor.

The Court: You may do so. Is there any objection to the Respondent at this time making the Governor their witness?

Mr. Anthony: None whatsoever.

The Court: All right. You may proceed, then, upon that understanding, that the Governor is now your witness.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Respondent as follows:

Direct Examination

By Mr. Ennis:

Q. Governor, annexed to the return and answer are copies of your proclamation of February 8, 1943, and copies of correspondence between the Secretary of War, the Attorney General, the Secretary of the Interior, and the President of the United States. Are you familiar with that correspondence?

A. I am.

Mr. Ennis: May I have these documents on which the [166] cover sheet is dated March 31, 1944, marked for identification?

The Clerk: Respondent's Exhibit No. 5 for identification.

The Court: The Clerk will mark it for identification.

(Received and marked for identification Respondent's Exhibit No. 5.)

By Mr. Ennis:

Q. I show you Respondent's Exhibit 5 for identification, consisting of photostatic copies of draft of letter from the three cabinet members I just mentioned to the President, containing initials of the officials in the three departments interested, Interior, Justice and War, and annexed thereto a copy of the proposed proclamation of the Governor. Will you examine those photostats and

(Testimony of Hon. Ingram M. Stainback.)

state whether, according to your recollection, they appear to be correct copies of that draft initialed by the officers? (Handing witness photostats.)

A. Yes, that seems to be a copy and that is the photostatic copy of my signature.

Q. That's a photostatic copy of your signature?

A. Under the word "approved."

Q. Yes. Do you recall the occasion upon which those other signatures were affixed to the original of this photostat, Governor?

A. In general, yes. In all this discussion it was emphasized by the War, the Attorney General, and the Interior, that this matter should be settled without going to the President. He had burdens enough without taking up these other troubles.

[167]

So I think every department exerted every effort to arrive at an amicable settlement that would in substance restore civil authority as much as we could get and also satisfy the War Department. So we reached a tentative agreement which is contained in the proclamation that is attached here, whereby most of the civil authority would be given to the civil Government, but certain authority, which is mentioned in the proclamation, would be retained by the military authorities. They thought it would be a good idea to have that approved by the President. So these letters were drafted with that idea in mind, and both myself—and I don't know whether I can read this signature—and Mr. Fortas—

(Testimony of Hon. Ingram M. Stainback.)

Q. He's the Under-Secretary of the Department of the Interior.

A. —McCloy, I assume.

Q. John J. McCloy, the Assistant Secretary of War, Warner Gardner.

A. Solicitor of the Interior Department.

Q. And General Emmons?

A. And General Emmons signed this approval on the formal letter. I only examined the first. Maybe I had better look at the others.

Q. Yes, if you will, Governor.

A. This is from the President, the second letter in the exhibit is from the President and addressed to the Secretary of War, and was also signed by me, and the other is approved. [168]

Q. That's an agreed draft which was submitted to the President?

A. Yes, submitted to the President.

Q. And the next, the third document, appears to be a photostat of the proposed proclamation by the Governor?

A. Yes. That was agreed to, but I have in my notes on here "substitute page 3 of the Army proclamation." Apparently there is some change on page three of the original draft. I don't know what it was.

Q. Well, I think for the present purposes, Governor, that it would be sufficient if you would state if that is one draft of the proclamation?

A. That is a draft.

(Testimony of Hon. Ingram M. Stainback.)

Q. Which also contains the signatures you mentioned?

A. Yes, the approval of the signatures mentioned.

Q. By comparison in the record we'll be able to work out the final proclamation.

A. Page three was changed.

Q. But it will appear in the final proclamation?

A. Page three was changed in both proclamations, both mine and the General's. I've got on mine "January 18, Mr. Gardner said 'substitute page 3 of the Governor's proclamation'."

Mr. Ennis: I request that this be marked as Respondent's Exhibit 6 for identification, these several documents under a seal and certificate of C. Ingling, Chief of Files of the White House. [169]

The Court: It may be marked for identification.

(Received and marked Respondent's Exhibit No. 6 for identification.)

By Mr. Ennis:

Q. Governor, I request you to examine Respondent's Exhibit 6 for identification, which purports to be photostats of a letter dated February 1st, 1943, to Secretary Stimson from the President, but bearing a typewritten signature, and a letter of January 18th, 1943, photostat of a letter, bearing the actual signature, photostat of the signature of the Secretary of War, the Attorney General, and the Secretary of the Interior. Will you examine the letter of January 18th and state, according to your recollection, whether that appears to be a

(Testimony of Hon. Ingram M. Stainback.)

photostat of the letter from the three members of the cabinet to the President, enclosing a copy of your proposed proclamation of February 8th?

A. That is the same as the copy that I have, excepting that the copy that I have does not bear the signature of the Secretary of War, the Attorney General, nor the Secretary of the Interior.

Q. But the text is the same?

A. The text is the same as the one in my files, but it does not bear the signatures.

Mr. Ennis: I request that this be marked as Respondent's Exhibit 7 for identification.

The Court: It may be marked for identification. [170]

Mr. Ennis: This is a document dated March 22, 1944, and affixed thereto by seal, a photostat of a letter dated February 1, 1943, bearing the photostat of the signature of the President to a letter to Secretary Stimson.

(Received and marked Respondent's Exhibit 7 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 7 for identification, and will you state whether that appears to be a photostat of the letter from the President to Secretary Stimson but bearing a photostat of the President's signature? (Holding witness the exhibit.)

Mr. Anthony: I might state, if the Court please, that there is no issue about this. There is no issue about the execution and delivery of these documents except an issue of relevancy.

(Testimony of Hon. Ingram M. Stainback.)

The Witness: This is the same as the letter in my file and bears the photographic copy of the signature of the President, and the letter in my file does not bear the signature of the President.

Mr. Ennis: I request that this be marked as Government's Exhibit 8 for identification, an agreed draft, photostat of agreed draft of a letter from the Governor of Hawaii, dated January 18, 1943, to General Emmons, under a certification of the War Department dated March 31, 1944. (Handing a photostat to the Court.)

The Court: Let it be marked for identification.

[171]

(Received and marked Respondent's Exhibit 8 for identification.)

Q. Governor, I request you to examine Respondent's Exhibit 8 for identification and state whether or not it is a photostat of a letter from the Governor, yourself, to General Emmons, bearing under the word "approved" your signature and the signature of the other officials of the departments which appear in the other letters.

A. This is the photostat of the agreed draft that was arrived at in Washington. The letter was not written until I came back to Honolulu, and at the time I believed General Emmons had left quite some time prior to my leaving Washington.

Q. Was the letter, in this form sent to either General Emmons or his successor in office?

A. It was sent to General Emmons.

Q. It was? A. Yes.

(Testimony of Hon. Ingram M. Stainback.)

Q. In this form?

A. Yes. I am not quite sure; I have nothing but the draft, but I am quite sure that such a letter was sent.

Mr. Ennis: If the Court please, a word of explanation. The opposing Counsel had not questioned the authenticity or the correctness of the copies of these original documents which are annexed to the answer and response, but I have marked these for identification and ask the Governor about [172] them because there are two purposes to be served: one, to prove the documents, which there is no objection to, and also to indicate by the signatures on the agreed draft that the three departments and the Governor worked on this problem and came to an agreement which is disclosed by their signatures on the drafts, which of course do not appear on the final letters.

Q. Now, Governor, are these documents the evidence of your consultations in Washington which culminated in your proclamation of February 8, 1943?

A. That is evidence of our agreement, yes.

Q. And they are an accurate statement of your agreement?

A. That is correct. Like all agreements, I might say that it is more or less of a compromise agreement.

Q. But they do express the sense of the agreement which was reached?

A. That is true.

Mr. Ennis: At this time, your Honor, I would

(Testimony of Hon. Ingram M. Stainback.)

like to offer in evidence Respondents' Exhibits 5, 6, 7 and 8.

The Court: Let me know the particular thing in the documents that you want to call the Court's attention to.

Mr. Ennis: I would like to call the Court's attention to the drafts of the letter from the three members of the cabinet to the President, initialed by the officials concerned, and the draft of the President's reply, initialed by them, to prove to the Court that it was the intention and the agreement [173] of the Government departments concerned that the resulting proclamation of February 8, 1943, should, so far as the law permitted and so far as their intentions could accomplish, accomplish the continued suspension of the privilege of the writ and the continuation of martial law.

The final exchange between the three cabinet members and the President, which are not initialed, I offer as additional evidence of the intentions of the public officials concerned as to the meaning of the language of the proclamation itself, if there is any question about the language.

The Court: Do these documents which you have and offer to put in evidence contain a copy of the proclamation that was actually issued?

Mr. Ennis: Yes, your Honor, there is annexed to the letter sent to the President a copy of the proclamation in the form in which it was issued.

The Court: Is there any objection?

Mr. Anthony: I have no objection to the au-

(Testimony of Hon. Ingram M. Stainback.)

thenticity of the letters, your Honor, and I have no objection to the documents going in evidence, preserving the right to argue as to the relevance and the construction of this proclamation. This proclamation, like any other written instrument, shall be interpreted by the instrument itself. And whether or not martial law exists does not depend upon the proclamation, as Counsel knows. With that statement, I have no objection to them going in evidence. [174]

The Court: The several exhibits offered are received in evidence as Respondent's Exhibit 5, marked 5-1, 5-2, etc. How many are there?

The Clerk: Four, your Honor.

(Respondent's Exhibit 5-1, 5-2, 5-3, and 5-4 received in evidence.)

[Respondent's Exhibit Nos. 5-1, 5-2, 5-3, 5-4, are set out in full as Respondent's Exhibits Nos. 2-1, 2-2, 2-3 and 2-4, starting at page 486 of this printed record.]

By Mr. Ennis:

Q. Governor, in connection with your proclamation of February 8, 1943, is it your understanding of the language you used that it was to continue the suspension of the privilege of the writ so far as the officials concerned could do that under the law?

Mr. Anthony: Same objection, your Honor.

The Court: Read that question, Mr. Reporter.

(The Reporter read the question.)

Mr. Anthony: May I state to your Honor, I have no objection to the witness answering the

(Testimony of Hon. Ingram M. Stainback.)

question so long as it is perfectly understood that this is a question of law for this Court. That is the meaning of the proclamation; that we are at liberty to address your Honor as to what the proclamation means.

The Witness: Shall I answer that?

The Court: Overruled. You may answer.

The Witness: There is no question, we intended to continue to suspend the writ of Habeas Corpus for the time being. Naturally, I didn't expect to continue it indefinitely, because [175] in the statement of the General at that time he said they would gradually relinquish civil control as it could be taken up; but as far as the proclamation was concerned, there is no question as to what was in our minds at that time. Whether he expressed it artistically or purposely, I presume it is a question for the Court. But as far as my own question was concerned, we intended to keep the right suspended.

Q. And at the time you issued your proclamation, Governor, you made a public statement to that effect? A. Yes, I think I did.

Mr. Ennis: Your Honor, that is all the examination I have of the Governor as the Respondent's witness. But I would for a moment like to go back to one question on the cross-examination, with your Honor's permission, unless Counsel has some cross-examination on this phase of the case.

The Court: You may do that, but before you leave this subject I want to get my mind clear as to what happened. I haven't examined these docu-

(Testimony of Hon. Ingram M. Stainback.)

ments that were put in. I had no opportunity to do so. I have heard a statement of Counsel as to what they contained in substance. As I get it, Governor, in Washington you conferred with executives of the National Government, department heads of the Interior, officials at least of the Interior and the Department of Justice and War as to the subject of martial law and the suspension of the Writ of Habeas Corpus here.

The Witness: Yes, your Honor. [176]

The Court: And after discussions you were not altogether in accord but you did come to an agreement, an understanding, a workable agreement, as you believed, and that was largely for the purpose of obviating the need of carrying the matter to the President for settlement, is that correct?

The Witness: That is true. Maybe I had better go back a little bit. I went back to Washington definitely for the purpose of obtaining the revocation of martial law. Under the Organic Act, the Governor declares martial law, but it contains approval of the President. I don't know what the law is on revocation, but I assume it is the same way; the Governor revokes it with the approval of the President. So my purpose in going to Washington—in fact, the matter had been discussed before my appointment as Governor—and I went back to obtain the revocation of martial law. I obtained part of it but not all of it. And this was a matter that they did not want to take to the President. All departments felt that he was heavily burdened

(Testimony of Hon. Ingram M. Stainback.)

at that time, and I think it was just before he went to Africa—I am not sure—but they didn't want to take departmental matters to him, and that they should be settled by the various departments.

This is the best settlement I could get, and I believe the Justice Department was aiding and abetting me at that time instead of the General. The War Department was adamant and they would not yield further than they did yield.

The Court: The War Department wanted martial law and [177] the suspension of the writ to prevail?

The Witness: That's right.

The Court: The Department of the Interior, what was their position?

The Witness: They wanted to revoke martial law entirely. Mr. Ickes was rather emphatic, although he didn't continue in many of the conferences, mostly the Attorney General and myself and Mr. McCloy.

The Court: The Department of Justice was neutral?

The Witness: The Department of Justice, as I take it, were very much in favor of me, that is, I say "me" in my position, and expressed it rather forcefully in several of the meetings but apparently they couldn't persuade the War Department.

The Court: You had several discussions?

The Witness: Oh, we went from early in December until, I think—this is dated the 20th of January (referring to notes)—and almost daily

(Testimony of Hon. Ingram M. Stainback.)

discussions, quite drawn-out. And after we had arrived at one settlement—not a settlement but a tentative agreement—then apparently this labor problem came up. And General Emmons returned to Hawaii and we had to go through the cable off and on as to what the General approved, and that took most of January, very extended discussions, very long, drawn-out, and I think everybody kept their temper more or less and discussed it good-naturedly with the idea of solving a very difficult problem. [178]

The Court: Well, the difficult problem was an economic problem here, as to labor?

The Witness: I say difficult problem, the difficulty was the stand of the War Department, and, as I understand, also the Navy Department, although the Navy Department took no part in these negotiations at all. But I think the War Department ascertained the wishes of the Navy Department. I understand they were very strongly of the opinion that labor should be controlled by the War Department or by the military, I should say, and that martial law should be continued in some form. In fact, I am quite sure the Navy Department was very much of that opinion.

The Court: Well, as a matter of practical experience and convenience, is that it?

The Witness: To a large extent. And the matter of facing conditions here and adjusting ourselves here to conditions after having been under military government for a year, the question of

(Testimony of Hon. Ingram M. Stainbaek.)
upset of economic conditions of the Territory had to be very carefully looked into, and a great many matters of that sort. We didn't want to throw a monkey wrench into the existing set-up and disorganize the Territorial economic condition any worse than that.

The Court: Well, during these discussions was the matter of the Constitutional provision that the Writ of Habeas Corpus shall not be suspended except during times of rebellion or invasion considered and discussed? [179]

The Witness: I don't think we went into any particular discussion of the legal end. It was a question of arriving at a practical settlement of an existing condition, and there was not much discussion of the law except at the first meeting, I think, the Attorney General gave his opinion on the law, on some phases of it. But after that it was mostly this question of what the War Department deemed absolutely necessary for the protection of the islands. I'll put it that way rather than the question of legality or matters of that sort; very little, in fact I think there was no discussion of law after the first meeting.

The Court: Well, was there any understanding as to how long that agreed arrangement should continue?

The Witness: Well, the very emphatic statement was made by General Emmons that he didn't want to exercise any civil powers and he certainly would get rid of all of it as quickly as he could with safety

(Testimony of Hon. Ingram M. Stainback.)

to the community, and we were all rather under the impression that very shortly the whole setup would be abandoned—at least I was. I don't know what the impression of the Attorney General was, and others. Direct reference was made to part of that, that they would give it up later, that is, the term Military Governor. And the Attorney General pointed out in the first meeting that there was no such thing in an American community, no such thing as Constitutional Government that applied to belligerent government. [180]

There was some statement made after we agreed. General Emmons wanted to retain that title for some reason or another for awhile. I opposed that because I said that Hawaii was an integral part of the United States and shouldn't be treated like a conquered country or a country in rebellion. The Attorney General argued with me and said: "What do you care what it calls itself?" Well, I said: "As long as the President doesn't recognize it, there is no official recognition; he can call himself Emperor Jones, as far as he wishes, as far as I'm concerned." So you will note in the letter the President addresses him as "Commanding General."

That's the only thing where they said it would be definitely dropped in a short time. The others would be dropped as quickly as it could be with safety to the Territory.

The Court: This proclamation that you promulgated on February 8, 1943, did you draw that or did your Attorney General draw it?

(Testimony of Hon. Ingram M. Stainback.)

The Witness: That was a proclamation that was agreed to in Washington, drawn mostly by Mr. Gardner of the Solicitor's Department and Mr. McCloy, I think, of the War Department; a good many others sitting in from time to time, but as draftsmen, I believe they were. Probably some attorney knew more about it, but I don't know whether Mr. McCloy attended all of the conferences. Mr. Gardner, when the proclamation began to take final form, was the chief draftsman at that time. So that was all agreed upon before I came back. I simply copied [181] the agreed form after my return to the Territory.

The Court: You brought the proclamation back with you?

The Witness: Yes, a draft of it.

The Court: How much time had elapsed between the time when you were holding these conferences and joined in the departmental agreement there before the proclamation was issued?

The Witness: I left Washington in the latter part of January. I think these letters were dated the 18th or 20th. The proclamation was issued soon after my return, on the 8th of February, I believe, is the date of it.

The Court: That's all.

Mr. Ennis: I have nothing more on this phase of the Governor's testimony.

The Court: Now, there were one or two questions that you wanted to revert to.

(Testimony of Hon. Ingram M. Stainback.)

Mr. Ennis: Yes, unless you have some cross-examination on this phase.

Mr. Anthony: I'll take my redirect and cross at the same time. Go ahead.

HON. INGRAM M. STAINBACK,

Governor of the Territory of Hawaii, being previously sworn, testified for the Petitioner as follows:

Cross-Examination

(Continued)

By Mr. Ennis:

Q. Governor, on your direct examination by Mr. Anthony [182] you testified that it was your opinion that there was no danger of invasion, imminent danger of invasion at this time?

A. That is correct.

Mr. Ennis: Now, at this time, with your Honor's permission I would like to repeat my question and request that the witness be allowed to answer the question as to whether, in his opinion, there was an invasion on December 7, 1941. Now, your Honor has already sustained an objection to that question, but I would like to make the point that the witness be allowed to testify as to his opinion as to the present time.

The Court: Yes, all right, you may ask that question.

The Witness: I don't think there is any comparison between December 7, 1941, and the present.

(Testimony of Hon. Ingram M. Stainback.)

I talked to a great many officers, Army, Navy and Marine, a great many.

Q. I understand, Governor.

A. May I finish my answer in this way? At the present time I know there are certain submarines in these waters here to seek information.

Q. Well, now, Governor, I don't wish to interrupt you but I do think, your Honor, that the particular question is whether or not in the Governor's opinion—and he has told us what he has observed on December 7th—whether or not there was an invasion on that day? And if I may, I'd like to have that particular question answered. [188]

The Court: That largely runs to the question as to what the Governor considers the meaning of the term invasion. He has used that term in saying that he was quite sure there was no imminent danger of invasion now. And you are asking him if there was an invasion of the islands on December 7, 1941. I think the question is fair. You may answer.

A. I have talked to and I do not disagree with the Admiral and the General. Of course, you can take out the weasel words. I think what they mean is that we have submarines here.

Mr. Ennis: Well, your Honor, I object to what the Admiral's and General's views are. I think we ought to get an answer to the question of what the Governor's opinion is on whether or not there was an invasion on December 7th.

(Testimony of Hon. Ingram M. Stainback.)

A. I've got to explain that. Today there is no possibility of a repetition of December 7th.

Mr. Ennis: If your Honor please, I request that that answer be stricken as not responsive to the question of whether or not there was an invasion on December 7th.

The Court: I think the witness should be allowed to express it in his own way, to answer the question as to whether he considers there was an invasion on December 7th.

A. In comparing it with today, I have to take it today; today I understand air raids can be made.

Mr. Ennis: I renew my objection, your Honor; the answer is not responsive. [184]

The Court: It may be. If it isn't at the finish, we will entertain a motion to strike.

Mr. Ennis: I take exception, please.

A. But because of our complete protection by antiaircraft today, I think any expert will agree the planes will be kept at such a height—they can come in but they could not get any targets with any accuracy like they did on December 7th. So as far as I am concerned, you can consider December 7th invasion, and yet I still say there is no imminent danger of invasion today because they could not possibly have a repetition of coming right in on top of the targets with the planes that came in December 7th. Of course, we thought there was invasion on December 7th. There was a radio announcement that paratroopers were landing here, there, and everywhere else. But as to whether that consti-

(Testimony of Hon. Ingram M. Sfainback.)

tutes invasion, I don't think there could be any repetition of that, and I think any officer that knows anything about our air protection here will tell you that the planes might get in but they will be kept at such altitudes that they could not possibly deal with any accuracy on targets in the Territory. I have that on the very highest authorities from numerous sources.

So regardless of whether that was an invasion or not, I don't think that invasion could occur today. I don't know whether I am making myself clear but I've got to make that comparison to say now that I still maintain that there couldn't [185] possibly be any imminent danger of invasion today.

Q. Well, now, Governor, do I understand that your answer to my question is that there was an invasion on December 7, 1941?

A. I am not prepared to pass on the legality of whether the Court would hold that as invasion or not. My description of invasion is where troops land to take possession. And from that standpoint I don't think there is the slightest danger of invasion. I think that there possibly may be, from all the people that I talked to, a raid, that is, a bombing of this Territory. It could be done; they couldn't stop it; they do it in London, if they are willing to make the sacrifice. But they would be kept so high that there could be no accuracy of bombing, and probably most of the bombers would come to grief. I understand we are very heavily fortified here in that respect.

(Testimony of Hon. Ingram M. Stainback.)

Q. Well, of course, Governor, I understand your view as to the situation today. I appreciate that. But what I wanted, if I could get it, was an answer to the question of whether or not, in your view, there was an invasion on December 7, 1941?

A. I would say there was imminent danger of invasion at that time, and I would have certainly declared martial law. I wouldn't think it would be necessary to pass on the legal problem whether there was a technical invasion or not. [186]

Q. Well, apart from the legal problem, which I am sure the Court will deal with adequately—the statute, Section 67, uses the words “invasion or imminent danger thereof”—now, couldn't you express an opinion as to whether what you observed—

A. I would request the Attorney General to express an opinion on the legality, but I certainly would declare martial law on the prime situation that we had imminent danger there. I wouldn't argue on the question of splitting hair as to whether we were invaded or not.

Q. Well, Governor, I don't ask you for a legal opinion.

A. I was not Governor at that time and I did not in any pass on the question. If it would come before me in Court, I might have passed on it, but I hadn't taken testimony. But I would sustain it if I had been Governor, I would sustain it on the question of imminent danger.

Q. But on the question of invasion and imminent danger thereof, that is not only a legal question but

(Testimony of Hon. Ingram M. Stainback.)

in any community and to a Governor it is more vitally a factual question. Couldn't you answer from what you observed and from what you know, living in the community and being a Federal Judge, as to whether or not there appeared to be an invasion ~~on~~ December 7th?

A. It certainly appeared to be an invasion. And it happened. There is no question about that. We certainly acted on that assumption. [187]

Q. Wouldn't you say there was an invasion?

A. Actually it turned out there was no invasion but just the sinking of our fleet.

Mr. Ennis: That is all. Thank you.

Redirect Examination

By Mr. Anthony:

Q. Governor, your views as to the imminence of invasion and the requirement that the privilege of the Writ of Habeas Corpus be suspended, they have been the same for the year 1943 and the entire year 1944? A. Yes.

Q. In our direct examination by Mr. Ennis in regard to the proclamation, you made reference to relinquishment of civil authority. That was agreed upon and so expressed in the document?

A. Yes, it was agreed that gradually there would be relinquished civil authority to the civil government.

Q. From and on March 10, 1943, what has been the course of events?

A. Nothing has been relinquished as far as I

(Testimony of Hon. Ingram M. Stainback.)

know, and we have taken no action. I have conferred with General Richardson a couple of times to try to get a working agreement. I might state, your Honor, we haven't been having any fights over this situation. I don't want to appear—General Richardson and I are on the friendliest terms and I try to cooperate with him, [188] and I am sure he has tried to cooperate with me, and my suggestions in Government have been as much to aid him as to aid the people of the Territory. I'm probably put in a little false position here on some of these answers and questions.

Mr. Anuthony: No further questions.

Mr. Ennis: Well, I think perhaps I should state, as the Governor did, that my department, the Department of Justice, and the Attorney General, we want to make it perfectly clear that whatever our obligations are as an administrative department of the Government in helping work these things out administratively, of course my position here, as a representative of the Attorney General, is to defend any Federal Government officials who are sued by a private party; and with the Governor I merely wanted to bring out as clearly as I could the actual facts of the matter. And I think that the Governor will agree that the Department of Justice and the Department of the Interior work very closely together on these matters, and on administrative matters—we deal very closely on them. But when any Federal official is sued, indeed, if the Governor is sued in connection with some other aspects of

(Testimony of Hon. Ingram M. Stainback.)

this matter, we might very well in defending him take a position somewhat different from the position we now take. But we defend every department of the Government. I think in cross-examining the Governor that it is fair that I should state that on the record. I think the Governor understands that.

[189]

The Witness: I have no kick, Mr. Ennis. I'm glad to hear you defend me if I get in trouble.

The Court: I think that is all.

(Witness excused.)

The Court: We'll take a recess at this time.

(A recess was taken at 10:31 a. m.) [190]

J. FRANK WICKHEM,

Captain, U. S. Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state your full name and your present occupation?

A. Frank Wickhem. I am a Captain in the Army of the United States.

Q. What is your present position, your present duties?

A. I am assigned to duty with the Office of the Military Governor, and as a part of those duties I have the duties of the Provost Court Commissioner for the Territory of Hawaii.

(Testimony of J. Frank Wickhem.)

Q. What did you do before you came into the Army and when did you come in?

A. I came in October 1st, 1942, and I was a practicing lawyer.

Q. Where?

A. At that time in Los Angeles, California.

Q. How long have you been admitted to the bar?

A. I have been admitted to the bar since 1927.

Q. In California?

A. No, I was first admitted to the bar in the State of Wisconsin, after having graduated from the University of Wisconsin; then in the State of South Dakota, where I practiced until 1939, and then in the State of California.

Q. What duties are assigned to you in connection with your [191] assignment to the Office of the Military Governor?

A. Particularly the duties of the Provost Court Commissioner.

Q. What are those duties?

A. The duties of the Provost Court Commissioner are to coordinate the courts, that is, to see that the various Provost Courts operate under the same policy, to recommend and to help establish policy, to watch questions of jurisdiction, as to whether or not the Provost Courts have jurisdiction of certain offenses or whether they shall go to civilian courts, and to make recommendations and to initiate policies for the operation of the courts.

Q. Will you state very briefly for the Court how the Provost Courts do operate?

(Testimony of J. Frank Wickhem.)

Mr. Anthony: I object to that as immaterial, your Honor. I don't see that that has any relevance.

Mr. Ennis: Well, if the Court please, Counsel is attacking the operation of the Provost Courts. It seems to me that it has some pertinence to the discussion to know just what its jurisdiction is and how the Court operates. I think the Court will be helped by having some presentation of what the Provost Courts are rather than considering the question of their operations in vacuo without any discussion by the persons who are running them.

Mr. Anthony: Does Counsel intend to review the entire history of the Provost Courts, the number of quarts of blood impounded and bonds and dollars and fines and things of that nature that have been imposed upon the community? I don't know. I'm willing to go into it if the Court feels that there is any relevance [192] in it. I don't see any relevance to it.

Mr. Ennis: I think that the present operation of the Courts, their methods of procedure, should be very briefly described in Court. I don't have in mind the statistics, the summary of all the fines that they imposed.

The Court: Well, it seems to me that the thing more pertinent is, Where did the Provost Courts come from, in what manner and by what authority were they created?—rather than just how they operate at the present time.

(Testimony of J. Frank Wickhem.)

Mr. Ennis: I'd be glad to have the witness explain that to the Court.

Q. Would you first explain, Captain Wickhem, upon what authority the Provost Courts operate here?

A. When martial law was declared in the Territory of Hawaii, one of the first general orders which was issued—I don't know which one it was, I think it was General Orders No. 2—established Provost Courts and established their jurisdiction, and then named the particular Judges who were to sit as Provost Courts. Now, my understanding as to the authority is the inherent right of an executor or a military commander to establish tribunals to enforce the general orders which are initiated under martial law.

Q. And at present the Provost Courts operate under such general orders? A. That's right.

Q. Will you now state very briefly—

The Court: May I stop you for a minute? Provost Courts are not any regular part of the Army organization, is that so? [193]

The Witness: Yes, they are, Judge. The Courts-Martial Manual, the Manual of Courts-Martial itself, in Article 15 of the Articles of War, recognizes the existence of Military Commissions in Provost Courts.

The Court: And just in those words, that is all?

The Witness: As to jurisdiction.

The Court: Without any definition as to what they are or how they are created, isn't that so?

(Testimony of J. Frank Wickhem.)

The Witness: Yes, to my knowledge that is the only reference in the Manual of Courts-Martial.

Mr. Anthony: That's all covered by their own rules, your Honor. It's very clearly covered in the official publications of the U. S. Army, in Field Manual 27-5 and also in The Rules of Winter Warfare.

The Court: They have been referred to but they haven't been put before the Court.

Mr. Anthony: Well, that is a matter of law, your Honor, which I can argue. I don't think that we need to take our law from the witness on the stand.

The Court: I understand that, but without a background as to what a Provost Court is or intends to be or thinks it is, it is certainly irrelevant just how it operates.

Mr. Ennis: — Well, your Honor, as I understand it, the witness has stated under what authority the Provost Courts here in Hawaii, which we are interested in, do operate. Now, I think the history [194] of the Provost Courts is probably a matter for legal argument. And I am sure the opposing Counsel will trace the history in his argument. But what I had in mind for Captain Wickhem to tell us is, how, in fact, the Provost Courts operate here.

The Court: The objection is overruled, subject to a motion to strike all this testimony.

Q. Will you state now, Captain Wickhem, briefly what procedure is used in the operation of the Provost Courts?

(Testimony of J. Frank Wickhem.)

A. Well, the Provost Courts, under the jurisdiction as now set out in General Orders No. 2; have certain specific portions of jurisdiction to operate in; that is, they enforce all of the General Orders. They have jurisdiction of the Armed Forces for traffic violations, either day or night; jurisdiction of all of the civilians only during hours of darkness and blackout. The actual operations of the Court, that is, the manner in which a violation is brought to the attention of the Court, is through three enforcing agencies: the Shore Patrol, the Military Police, and the Civil Police. If a violation occurs, a citation is given by one of those agencies to the violator and he is requested then to appear, or summoned to appear at the Police Station within 48 hours for booking.

The Court: What police station?

The Witness: Your Honor, either Honolulu, if the violation occurs in the vicinity of Honolulu, or if it is in the vicinity of Aiea or in the vicinity of Kaneohe Police Station—

The Court: Well, the City and County Police Station, the [195] Civil Police Station?

The Witness: Yes, the Civil Police Station. Upon his appearing and being booked, the charge, the information sheet, is sent over to the Provost Court. That's written up by the Civil Police Officers or by the Military Police or by the Shore Patrol, as the case may be, and then a charge is drawn. That charge is signed by the Prosecutor and its verification taken by an Army Officer, ordinarily the Judge. The defendant is brought into Court; he is arraigned; he is given the right to Counsel;

(Testimony of J. Frank Wickhem.)

he is informed that he has the right to the issuance of subpoena; he can bring his own witnesses, or, if they are not available that he has the process of the Government to bring his witnesses in for him. Then we proceed to the trial, if the defendant is ready for trial and he acknowledges being ready for trial. The rules of evidence are adhered to in a Provost Court. Incidentally, the men who are sitting as Judges in the Provost Courts at the present time, all of them in civil life were practicing lawyers with the exception of two, your Honor, one on the Island of Lanai and the other is Colonel Dupree, who is a regular Army Officer, but he has had experience in the Legal Department of the Army.

After the case is heard, the Court makes its decision. And after that decision is made, then the particular Judge who is hearing the case loses jurisdiction after that particular day. The record is sent to the Office of the Military Governor, where every case is given a review by officers in that department. Applications for clemency, in cases where the defendant feels [196] that the penalty has been excessive, can be addressed to the Military Governor or given consideration or acted upon in that department.

That briefly, Mr. Ennis, is the operation of the Courts.

Q. In connection with the reconsideration, or the review, rather, by the Office of the Military Governor, is it possible to obtain a new trial or is the redetermination made just there?

(Testimony of J. Frank Wickhem.)

A. It is possible to obtain a new trial to this extent, that it is my understanding that the Office of the Military Governor, in those cases, can cut any sentence or can remit any fine; it can do anything it wants to on its own motion, and to my knowledge that action has been taken in many cases.

The Court: And a new trial held?

The Witness: No, I don't recall that a new trial has been granted, but, on the other hand, I don't know of any instance where that has been asked for.

Q. You stated that jurisdiction over civilians on offenses after nightfall—you were referring to traffic offenses?

A. Yes, to traffic offenses. I noticed that omission.

Q. Do the Provost Courts prosecute any civilians on offenses not connected with blackout and similar military security regulations?

A. To my knowledge, all of the General Orders now in effect are essentially security regulations. And a civilian would be prosecuted for a violation.

Mr. Anthony: That is just his conclusion of the law; that is [197] all we are getting from this witness, your Honor.

The Witness: May I proceed?

The Court: Yes.

Mr. Anthony: What his understanding of the orders are, I think that I am competent to address the Court on that.

Mr. Ennis: I am asking the witness what the

(Testimony of J. Frank Wickhem.)

cases actually are that were prosecuted in the Provost Courts.

The Witness: Any violation of a General Order. And those are General Orders which are sometimes not connected with traffic or blackout.

Q. Have you prepared a summary of the kind of cases that now occur in the Provost Courts and the volume of business?

A. I have, for one month, at your instance, Mr. Ennis.

Q. Have you got that summary with you?

A. I have.

Q. Would you get it, Captain? For what month did you have it prepared?

A. The Month of February, 1944.

Q. And what are the statistics of the Provost Courts' activity for that month?

A. This, Mr. Ennis, is the Provost Court at Honolulu, just one Court; in that month there were 1,453 cases that came before the Court. Do you want to know the type of cases? I have them.

Q. Yes, generally.

A. For example, I will read them as they go. They are mostly speeding cases, blackout cases, those which are not speeding [198] are blackout; fraudulent entry into a military area, smoking aboard ship, failure to report military service, parking in a restricted waterfront area, making false statements, absenteeism.

Q. How many convictions?

A. Convictions: 819.

(Testimony of J. Frank Wickhem.)

Q. What other categories make up the 1,453?

A. Of those 1,453 that came before the Court—when I say “came before the Court” that isn’t quite a correct statement because of those there were 519 blackout forfeitures. There were 36 traffic forfeitures; 79 cases were dismissed.

Q. Explain what blackout and traffic forfeitures are?

A. Well, it is the policy of the Provost Court that for a first offender who is guilty of being out after curfew, he can put up \$5.00 and forfeit it without appearing in Court. If you are riding in a vehicle after curfew, if you put up \$10.00 you can forfeit a bail of \$10.00.

Q. Was this summary prepared under your direction as the Commissioner of the Provost Court?

A. It was.

Q. And it is an accurate summary and statistical survey of the business for the month of February, 1944?

A. To the best of my knowledge it is.

Mr. Ennis: I offer this in evidence, your Honor, as Government’s Exhibit 8, Respondent’s Exhibit 8.

The Clerk: Six.

Mr. Ennis: Oh, yes, six. [199]

The Court: That may be received in evidence as Exhibit six. That is what? What do you call it?

The Witness: It is a summary of the business that went through the Provost Court at Honolulu for the month of February, 1944.

(Testimony of J. Frank Wickhem.)

(Respondent's Exhibit "No. 6" was received in evidence.)

[Respondent's Exhibit No. 6 is set out in full as Respondent's Exhibit No. 3, starting at page 516 of this printed record.]

The Court: Is that the only month in which you kept such a record?

The Witness: The only month in which the figures were compiled, your Honor. The records are kept for every month.

The Court: How do those cases of traffic offenses get into that Court, the traffic violations and blackout violations?

The Witness: By citation by the Police Officers, your Honor.

The Court: What do you mean by "Police Officers?" It appears to me that there are two classes of police officers. We had a police officer on the stand here awhile ago, this morning, a civil policeman who had something to do with the arrest and presentation of the case before the Provost Court at Pearl City. That police officer apparently didn't belong to the regular Territorial or city and county police.

The Witness: That's true, your Honor. Inside the Pearl Harbor Navy Yard the civil police officers are the enforcing agency with the marines.

The Court: Well, then, you've got a kind of a provost marshal police force, haven't you?

The Witness: Yes, your Honor. [200]

The Court: Well, how many different varieties of police are there?

(Testimony of J. Frank Wickhem.)

The Witness: Well, as I said, in the City of Honolulu the enforcing agencies there, your Honor, are the Military Police, the Shore Patrol, and the Civilian Police of the City and County of Honolulu. The Civilian Police referred to in the Duncan case are those who operate, the Civil Service Police who operate only in the Pearl Harbor Navy Yard.

The Court: But the regular City and County Police Officers, when they get a traffic violation at any time, they route the case or someone routes it? Who does that? They do?

The Witness: That's done in the traffic division of the Police Department, Sergeant Camacho.

The Court: By what, by some military order?

The Witness: By the orders of his superior, the Chief of Police, your Honor.

The Court: The regular civil police officers make arrests for blackout violations?

The Witness: Yes, sir.

The Court: How does that get into the Provost Court?

The Witness: That goes to a different department in the receiving desk at the civil police department, and that in turn routes it to the Provost Court.

The Court: Not all cases, just some go here and some go there?

The Witness: All cases of traffic or blackout, your Honor, during the hours of blackout, go to the Provost Court. [201]

(Testimony of J. Frank Wickhem.)

The Court: Haven't some of those gone into the Magistrate Court?

The Witness: Not to my knowledge.

Mr. Ennis: That's all, Captain.

Cross-Examination

By Mr. Anthony:

Q. When did this system begin, this Commissioner of Provost Courts?

A. I don't know, Mr. Anthony, just when that General Order was initiated, but I know that it was in the General Orders at the time they were put out on March 10th.

Q. How long have you held this job of yours?

A. July 18, 1943.

Q. You said that you had available the statistics for the prior months?

A. That's right.

Q. I would like to have *you* statistics covering the entire period since the initiation of martial law, if you can produce those?

Mr. Ennis: I object to that, your Honor, on the grounds that it is not relevant to the issues here what the Provost Court did since the beginning of martial law, and I don't know whether such statistics are in form to put in. It seems to me it is asking for a great deal of work.

Mr. Anthony: He says they keep regular records. [202]

Mr. Ennis: But they have to be abstracted from the regular records.

The Witness: That's right. I frankly think it can be done but it will entail—

(Testimony of J. Frank Wickhem.)

Mr. Anthony: Yes.

The Court: Well, is it in a mass of other stuff that points it out?

Mr. Anthony: That's sewed up tight here, your Honor. I'll have to split it.

The Court: You mean that material that came in attached to the return?

Mr. Anthony: Yes, your Honor.

Mr. Ennis: Have you got a copy of it, Captain?

The Witness: Yes, I have.

Mr. Anthony: That's not been offered in evidence but by the traverse we have admitted the issuance of all of these General Orders, so in that sense it is before the Court.

Q. You stated, Captain Wickhem, that you made the policy of the Provost Courts?

A. No, I didn't intend to give that impression.

Q. Or you coordinated the policy?

A. That's right, when the policy is established, then I try to see that it is put into effect in each Court. [205]

Q. What is the policy of the Provost Court?

A. Well, in regard to procedure, for example—

Q. Well, what is it?

A. Do you want me to tell you every step? Well, one of the policies of the Provost Court—

Q. What I'm getting at is this, Captain. I won't refer to the policy of the Federal Court or any other Court that I have knowledge of. You have referred to the policy of the Provost Court. Now, I want to know what that policy is.

(Testimony of J. Frank Wickhem.)

A. All right. When I used the word, Mr. Anthony, I intended to take in not only procedure but also matters of practice; for example, clemency, things of that kind, clemency, the fact that it is the policy of the Court that anyone who feels that they should do so or feels that they should have some redress, make an application to the Military Governor to obtain that redress.

Q. Where do you find that in any order?

A. That's it; it's the practice; it's not in the General Orders.

The Court: Well, that's after and behind the Courts, some policy behind the Court, is that what you mean, some policy of some authority that is over, larger than the Court, that can, after the Court is through, dispense justice then according to its view?

The Witness: Well, sir, I consider that a part of procedure; that is, the cases are never completed until the Military Governor has reviewed them and has passed upon them and has passed upon [206] any application for clemency.

Q. Who makes this policy?

A. The Military Governor.

Q. You mean the Commanding General of the Hawaiian Department?

A. I think the Commanding General of the Hawaiian Department, to the best of my knowledge, confers with the official, meaning Colonel Morrison, and the policy is arrived at that way.

(Testimony of J. Frank Wickhem.)

Q. And General Richardson, so far as your system of Provost Courts is concerned, makes the policy of the Provost Courts?

A. I think General Richardson is familiar with the way the Courts operate, and that he has made any policy and has knowledge of any policy that is in existence now. That is only my own personal opinion.

Q. Well, then, you don't really know where this policy comes from?

A. Except that it comes from the Executive Office of the Military Governor.

Q. You referred to the Provost Courts having jurisdiction over civilians during blackout.

A. I referred merely to traffic cases.

Q. How about if there is an assault and battery case during blackout, it wouldn't come before your Court?

A. That's right, it would not.

Q. Who determines what Court a case will come before?

A. Well, as I explained to Judge Metzger, when the offense comes in it is routed over in the Police Department either to [207] the civilian court or into the Provost Court, and sometimes cases come over there where the facts will show that it was not maybe a blackout offense—it didn't occur during the blackout. Well, that comes to my desk and I send it back.

—The Court: Well, that is in Honolulu only?

The Witness: That's right, your Honor. And in the other outlying islands, why the Prosecutor and

(Testimony of J. Frank Wickhem.)

the Judge are instructed to see that every charge and every factual situation is such that it comes within the jurisdiction of the Court.

The Court: I didn't want to interrupt you.

Mr. Anthony: That's all right, your Honor.

The Court: May I ask, how do you get your convictions into the City and County Jail?

The Witness: Your Honor, if a sentence is pronounced, the Judge signs a committment just as he did in the present case.

The Court: Well, a committment in whose name, directed to whom?

The Witness: Directed to the Oahu Prison or the Warden of the Prison of the City and County Jail.

The Court: To any prison in the Territory?

The Witness: That's right, your Honor.

The Court: What authority does the custodian or jailer of these jails have to recognize and take into custody such prisoners?

The Witness: That is something that I can't answer, your Honor. I have been informed that there has been an order by one of the Commanding Generals—whether it was General Richardson or [208] probably his predecessor—ordering the various wardens or the jailers to take and keep in custody Provost Court prisoners.

The Court: Do you pay for their keep in the various prisons?

The Witness: To the best of my knowledge, your

(Testimony of J. Frank Wickhem.)

Honor, that arrangement is taken care of at the time that the amount collected by the Provost Court is turned over to the Territory. The Attorney General probably knows more about that than I.

The Court: The Territory is one thing, in a fiscal way, and the City and County is another. What about your local ones?

The Witness: I don't know about that, your Honor.

The Court: Well, how do you get them out of jail?

The Witness: At the time that their sentence is served, why they are released.

The Court: And not before?

The Witness: Unless they have been given clemency by the Office of the Military Governor.

The Court: Well, suppose they have been given clemency, how far could that clemency go, all the way to a pardon?

A. It would go all the way to a complete release, your Honor.

The Court: And how is that executed?

The Witness: And order is drawn in the Office of the Military Governor and it is taken down to the particular jail or prison where the particular individual is kept.

The Court: Well, these prisoners are sent to the jails by the Provost Court; and are they in a different class than those [209] sent in by the Courts of the Territory, the Magistrate Courts?

The Witness: I can't answer that definitely.

(Testimony of J. Frank Wickhem.)

your Honor, but it is my impression that they are just in the general run of prisoners in the County Jail.

The Court: This morning the witness for the Petitioner in this case came in here and said he was assigned to hard labor. I don't know whether the charge was really a misdemeanor or a felony charge, but it looked like a misdemeanor with all of the aspects presented here. Do your mittimuses provide for hard labor?

The Witness: It is within the General Order to sentence either with or without hard labor, but most of the sentences or the mittimuses do not read that way. I heard that testimony also and I don't know by whose authority he was given hard labor.

The Court: Well, it is designated on the mittimus whether the prisoner is to serve hard labor or not?

The Witness: To the best of my knowledge it is, your Honor.

The Court: Are you familiar with the form of the mittimus?

The Witness: Yes, your Honor.

The Court: I noticed that mittimus running in the name of the Territory. I believe it did, as I looked at it.

Mr. Anthony: Yes, it does.

The Court: Was I right?

Mr. Anthony: Yes, addressed to the high sheriff.

The Court: Well, I think that's all. I just wanted to get some facts.

(Testimony of J. Frank Wickhem.)

Mr. Anthony: Is your Honor finished with his examination? [210]

The Court: Yes.

By Mr. Anthony:

Q. Captain Wickhem, what law do you enforce in the Provost Court?

A. The orders of the Military Governor.

Q. How about traffic cases?

A. They are made in a particular order. We enforce the Territorial statutes in regard to traffic and also the City and County ordinances.

Q. Is that in the military orders? A. Yes.

Q. Which one?

A. It is my knowledge that it is in General Order 2, General Order 2, Mr. Anthony.

Q. What paragraph? A. Paragraph 3.01.

Q. And that says what, that you are authorized to enforce the laws of—

A. The Territory of Hawaii or any ordinance, resolution, by-law or regulation or rule of any city, city and county, or counties, and other municipal or subdivision of the Territory of Hawaii.

Q. That means authorized, the Provost Courts are authorized? A. That's right.

Q. There is nothing obligatory about it, however? A. No, that is true. [211]

Q. In other words, if they want to enforce the laws of the Territory in those Courts, the Judges will do it, and if they didn't want to they won't do it?

A. Well, they try to follow the General Orders.

(Testimony of J. Frank Wickhem.)

Q. Well, the General Orders just authorize the Courts to do it? A. That's right.

Q. Presumably the language means what the words say; all that does is give a discretion in that Judge, isn't that a fact?

A. Yes, that's right, that's the way it reads.

Q. Now, you take an Army or Navy Officer who is convicted of driving while drunk, either before or after blackout, would the Provost Court take his license away from him?

A. Yes, definitely.

Q. In every case?

A. Yes, we follow the same practice as the Territorial Courts.

Q. Are you sure about that, Captain Wickhem?

A. Mr. Anthony, I'm certain that every Court has been so instructed.

Q. But you are not certain about the fact?

A. I won't say that instances haven't occurred where the license has not been taken away, but if so, it has been by admission or failure of the Judge to follow the policy of the Court. Every case that I have on here, that I have sat on, or that I have witnessed, Mr. Anthony, since I have been here, they have taken the license away. [212]

Q. Are you familiar with Field Manual 27-5?

A. No, I am not.

Q. It has never come to your attention?

A. No, I know of it but I am not familiar with it.

(Testimony of J. Frank Wickhem.)

Q. Are you familiar with Field Manual 27-10, containing the rules of land warfare?

A. No, I am not.

Q. These are official documents of the U. S. Army. Just take a glance at them. (Handing witness two books.)

A. Any particular thing you want me to look at?

Q. The Military Government and Provost Courts. You don't purport to operate under either of these documents, do you? A. No.

Mr. Ennis: Objection, your Honor, on the grounds that it is calling for a legal conclusion. I think we should argue those matters out as a matter of law.

Mr. Anthony: Well, I just want to make sure that the witness has never even seen them. And he is the Provost Court Commissioner.

Q. You have never examined either one of these publications, that is true? A. That's true.

Q. Do you know whether anybody else in the Office of the Military Governor is familiar with these?

Mr. Ennis: Objections, your Honor.

The Court: Well, that question only goes as to whether he knows or not. [213]

A. I do not know, Mr. Anthony.

Q. Do you know what buildings the Provost Courts occupied in this Territory during the regime of martial law?

A. I know that they were in the City and County Building, the Police Station, the building where

(Testimony of J. Frank Wickhem.)

the Police Station was located prior to the time they moved across the way to the present building.

Q. Occupying the Courtroom of the District Magistrate of the City and County of Honolulu?

A. That's right.

Q. When did they move across the street into the Japanese bank?

A. I can't tell you that but I think it was some time in 1942. I can't tell you definitely.

Q. How about over in Hilo, where do they hold court?

A. They hold court in the District Court in Hilo, the District Courtroom.

Q. That's the District Magistrate's Court for the District of Hawaii?

A. That's right.

Q. Used by the Provost Court for the trial of Provost Court prisoners?

A. That's right.

Q. Provost Court cases? Most of them turn out to be prisoners, isn't that a fact?

A. No, that isn't true. [214]

Mr. Ennis: I object.

Q. Now, Captain, this review that you have talked about, that's not made public to any member of the public, is it?

A. No, it isn't.

Q. You have never seen that published any place that there is such a thing as a review?

A. No, I have never seen it published.

Q. It doesn't appear in any General Orders?

A. No, it does not.

Q. And it is a fair statement to say that whether or not a person can get a review or remission or

(Testimony of J! Frank Wickhem.)

discharge lies wholly within the discretion of the Office of the Military Governor?

A. That's a fair statement.

Mr. Anthony: That's all.

The Court: Do you mean to say that there is a review made in the absence of any application for a review?

The Witness: That's right, your Honor. Every case gets a review.

The Court: What's the purpose of that?

The Witness: So as to determine whether or not an injustice has been done in any way, shape or form; if the Court got out of line.

The Court: Who determines that, some superior judicial official that sits behind the Provost Courts?

The Witness: Well, it's reviewed by at least two officers, your Honor, and then it goes to Colonel Morrison. And I don't [215] know this, I don't know whether he takes those matter up with the General or not, but it is my impression that he definitely does.

The Court: All cases or just such class of cases like absenteeism and labor cases?

The Witness: Every case, your Honor, excepting bail forfeitures, I presume; as a matter of fact, every case that goes up there.

Mr. Anthony: Do you think that the Commanding General reviews these cases?

The Witness: No, I didn't say that. I think that in cases where there is any question about it, or where there is an outstanding situation, I

(Testimony of J. Frank Wickhem.)

think it is taken up with the Commanding General, but again I say that is my impression entirely. I know it is reviewed by two officers and finally goes to Colonel Morrison.

The Court: Suppose they concluded that too severe a fine has been assessed and collected, is anything done about that?

The Witness: Yes, your Honor, they either remit the fine in whole or in part or take whatever action there is. If it is an incarceration case, they take whatever action there is to remit a portion of that.

By Mr. Anthony:

Q. Have any fines ever been paid back?

A. Yes, I know of some down in the Provost Court.

Q. Provost Court?

A. That's right, where we found out the jurisdiction was wrong—fellows have been called in.

[216]

Q. That's what I'm talking about; that's just where you made a mistake?

A. That's right.

Q. Where the reviewing authority came to the conclusion that the fine was excessive, has there ever been a fine paid back?

A. If you are differentiating between a fine which has been paid and one which is not—

Q. That's right, after the money gets into the till?

A. I don't know of any. There may have been.

(Testimony of J. Frank Wickhem.)

The Court: Well, does every one of these Provost Courts throughout the Territory have an official reporter; a competent reporter?

The Witness: Yes, they do.

The Court: How long has that practice been established?

The Witness: Well, I can vouch for only one from the time that I have been there, and I visited every Court. I have seen every Court in operation with one exception, that is, the Court on the Island of Lanai, and I know that there has been a reporter present in each instance and I know they are so instructed.

The Court: They take all of the proceedings and all of the testimony?

The Witness: They don't take all the proceedings and all the testimony, your Honor. They take—if a case is contested, they take a contested case. If a case is a serious case, such as a drunken driving case or something of that nature, they take the testimony and preserve it, even though the plea is guilty. [217]

The Court: Well, if the plea was guilty, there wouldn't be any testimony?

The Witness: Yes, there is, your Honor. In the Provost Court, even though the plea is guilty, the Court is given not only the authorization but the direct order to determine whether or not the facts justify a finding of guilty, because sometimes a man inadvertently enters a plea of guilty when

(Testimony of J. Frank Wickhem.)

a set of circumstances show that in fact he wasn't guilty.

By Mr. Anthony:

Q. Where do you find that in the orders?

A. It is not in the General Orders but it is the practice, it is Courts-Martial practice and it is the practice that's been followed to my knowledge in the Provost Court.

Q. When did the Provost Courts start keeping records?

A. Well, I can't answer that, Mr. Anthony, because as I say—

—Q. Was it this year?

A. Oh, no, no, no, I can vouch for the fact that ever since I've been there that complete records have been kept and they were complete records when I came down there.

Q. When did you start that?

A. I didn't start it.

Q. When did you start at your job?

A. July 18, 1942—1943.

Q. 1943? A. That's right. [218]

Q. So at least since that time they have kept complete records? A. That's right.

Q. Are they public records?

A. They are certainly available.

Q. Now, don't equivocate, Captain.

Mr. Ennis: I object to that, your Honor. Let him be allowed to ask a question.

The Witness: May I answer?

The Court: Yes.

(Testimony of J. Frank Wickhem.)

The Witness: No, they aren't to this extent. If anyone is going to see the records down there, they have to get the permission of the Military Governor.

Mr. Anthony: In other words, members of the public can go down and as a matter of right examine the records of the Provost Court, is that a fact?

The Witness: That's right.

Mr. Ennis: I move that Counsel's remark about the witness equivocating before he started to answer the question be stricken.

Mr. Anthony: I have no objection to that being stricken.

The Court: Yes, that may be stricken.

Mr. Anthony: That's all.

Redirect Examination

By Mr. Ennis:

Q. Captain, you spoke of the policies adopted in the Provost Court and also of the review of these cases in the Office of the [219] Military Governor. As a result of the review of the cases, do you arrive at a certain coordination of the activity of the Provost Courts? A. That's right.

Q. Do you in that way make uniform their activity and do you reach policies of procedure?

A. That's right.

Q. Do you communicate—

The Court: You are coupling too many questions in one and getting one answer to the whole.

(Testimony of J. Frank Wickhem.)

I can't tell from the answer just which question he was answering to.

Q. Well, I'll try and break it up, your Honor. Do you, for example, in going over the fines for first offenses in a particular type of case examine the cases to see whether the Courts are more or less uniform in their treatment of that type of case?

A. That is exactly right. We want the Court sitting in Honolulu or the Court sitting in a comparable area some place else to treat the same offense in the same manner.

Q. Do you then, in the course of that review, form a policy in respect of the fine for a first offense for a particular type of case?

A. That's right.

Q. Do you communicate that policy to the Courts involved?

A. That is true. I have done it personally.

Q. And is that the kind of thing you mean when you speak of the policy of the Courts? [220]

A. That's it, exactly.

Q. Does the same kind of activity go on in respect to any remissions of fines or any suspensions of convictions?

A. That I can't answer, Mr. Ennis, as I don't take any part in that.

Q. You do not? A. No.

Mr. Ennis: That's all. Thank you.

(Testimony of J. Frank Wickhem.)

Recross Examination

By Mr. Anthony:

Q. This review, Captain, how does that work, is it automatic?

A. Every case is reviewed, Mr. Anthony, automatically as soon as it comes up there.

Q. Was Mr. Duncan's case reviewed?

A. Yes.

Q. That was after he filed his Petition?

A. I don't know when it was but I inquired as to whether or not the case has been reviewed and I know it has been.

Q. Was anybody called to present any views on the review other than the military authorities?

A. I don't know. Again I say I don't take any part in that procedure, so I don't know just what happened.

Q. Well, are the notes transcribed when a case is reviewed?

A. I don't know that. You see, when the Provost Court sends the record up to the Military Governor's Office, then it goes to the officer or officers—two of them—for review. But I take no [221] part in that at all.

Q. I know that, Captain, but as the Coordinator of the Provost Courts you know what the Courts do? A. That's right.

Q. Now, do the Courts actually transcribe their cases, their contested cases, and ship a lot of transcripts up for review?

(Testimony of J. Frank Wickhem.)

A. No, they do not. For example; all absenteeism cases, those records are kept and they are all requested when there is an application for clemency. But outside of that transcripts are not written up and sent up.

Q. How can a reviewing officer review a case when he doesn't know what was before the Court below?

A. Well, the only thing they can do is to look at the record insofar as the charge is concerned and the sentence.

Q. The pleadings? A. That's right.

Q. Then arrive at a conclusion whether or not justice was done? A. That's right.

Mr. Anthony: That's all.

The Court: This policy of getting the Provost Courts all on an equalized plane; so as to synchronize them as to punishment for given offenses under similar conditions, that is something you have originated?

The Witness: No, I haven't, Judge Metzger. I think Eddie Silva tried to do the same thing before me. [222]

The Court: That was to correct flagrant earlier abuses, was it?

The Witness: Well, it was to make the Courts operate in such a way so that the sentences meted out would be commensurate with the offenses.

The Court: Do you think you've got that pretty good?

The Witness: We have tried, your Honor.

(Testimony of J. Frank Wickhem.)

Q. Suppose along with that incident you have a case of criminal neglect resulting in homicide?

A. That would not be tried in a Provost Court.

Q. Where do you find that in the General Orders?

A. It is not in the General Orders; it is just a matter of interpretation.

Q. Now, in regard to the trial of civilians, what is the language in the Orders that gives the jurisdiction over to the Provost Courts for the trial of civilians?

A. The language in the General Orders is that any violation of General Orders during blackout, to try civilians for any violations of a General Order and for traffic offenses during blackout.

Q. Suppose the civilian is guilty of reckless and heedless driving during blackout?

A. He is tried in the Provost Court.

Q. Suppose along with that offense there is a resulting homicide during blackout, criminal neglect, where is he tried?

A. Well, it has never come up, Mr. Anthony, but I'd say offhand that he'd be tried in the civil courts.

Q. Is there anything in the orders that would give you any guide to that?

A. No, that's right, there isn't. [226]

Q. You've got to interpret the words "traffic offenses", is that right?

A. That's right.

Q. That may mean a felony and it may mean a mere misdemeanor?

A. That's right.

(Testimony of J. Frank Wickhem.)

Q. And it's your job to make that interpretation, is that right? A. I'd say, Yes.

Q. And you sort these cases out and some of them will go to your Courts and some will go to the Civil Courts? A. That's right.

Q. How about the crime of murder by a civilian during blackout? A. No.

Q. By "No" you mean that is not tried in the Provost Court?

A. That's right; it goes to Civil Courts.

Q. In other words, in order to get down in the Provost Court you've got to do one of two things, either violate a military order——

A. That's right.

Q. ——or do something in connection with traffic?

A. Or an order of a Military or Naval Commander.

Q. Yes. Those three things?

A. That's right.

Q. And whether or not you have committed any crime or offense that relates to traffic depends upon your determination? [227]

A. That's pretty generally true.

The Court: When was the Naval Commander brought in?

The Witness: In General Orders 2.

The Court: Two?

The Witness: Yes, your Honor.

The Court: Well, such orders of the Naval Com-

(Testimony of J. Frank Wickhem.)

mander, have they been published or otherwise promulgated to public notice?

The Witness: Yes, your Honor. That would be like a speed law on the Pearl Harbor Naval Reservation. Those orders are published and also the signs are up.

By Mr. Anthony:

Q. Captain Wickhem, the General Orders, are they published?

A. They have been published, Mr. Anthony, in the papers.

Q. Is there any authority for their publication that you know of?

A. No, I don't know that.

Q. Do you know whether or not the newspapers publish these without charge?

A. No, I don't know in regard to the compensation, Mr. Anthony. I know they did appear in the papers.

Q. That's a fact, is it not, that on many occasions they appear after they have been issued?

A. I think that it is released to the press simultaneous with its enactment, when it is released it is also given to the press immediately.

Q. Are you sure about that? [228]

A. Yes, I have been told that, Mr. Anthony.

Q. How many people are in the Office of the Military Governor?

Mr. Ennis: Objection, it is irrelevant.

Mr. Anthony: I don't think it is irrelevant at all. This is a new system of administration of jus-

(Testimony of J. Frank Wickhem.)

tice in Government, and I think we ought to have some facts about it.

Mr. Ennis: If the Court please, the Office of the Military Governor has a great many duties that are not related to the Provost Court system, I think.

The Court: Sustained.

By Mr. Anthony:

Q. How many Provost Judges do you have?

A. We have four on this island, and four on the other islands; eight. And then I think there are at least one or two more, Mr. Anthony, who are qualified to sit who are not sitting.

Q. These Judges have clerks?

The Court: What do you mean by "qualified"?

The Witness: I mean they have been appointed, that's right, they have just been appointed and named.

Q. Who appoints them?

A. The Military Governor.

Q. By that you mean General Richardson?

A. That's right, by General Order.

Q. And does he pass on the qualifications of these Judges?

A. I think that they are investigated very carefully, and [229] that Colonel Morrison reports to General Richardson the man that he intends to recommend, and General Richardson in a general way knows his qualifications, but I won't say that he knew them specifically.

Q. That is, the individuals are investigated by

(Testimony of J. Frank Wickhem.)

Colonel Morrison who in turn makes a report to the General?

A. That's right, and when I say Colonel Morrison, for example, I reported to Colonel Morrison about certain men, and he asked me about them, and I told him about their legal background, their duties in the Army and why I thought they'd be qualified to sit. And I'm not the only source of information; he gets information, the same information, from other sources.

Q. Prior to your appointment, was it the practice to have lawyers sitting on these Courts?

A. Yes.

Q. In a few instances?

A. Yes, Colonel Baroff was a practicing lawyer.

Q. He was a recent appointment, however, fairly recent?

A. Well, it was 1942, I think early in 1942, Mr. Anthony.

Q. Is it a fact that a large number of those Judges had no training in the law, isn't that a fair statement?

A. No, I don't think that is a fair statement. I think that most all of the judges who have sat in the Provost Courts had a legal background, Mr. Anthony. Now, since I've been down there there are only two, as I said yesterday, who are not lawyers in civil life. [230]

Q. How about these military commissions?

A. The military commissions?

Q. Yes.

A. I am not familiar with them.

(Testimony of J. Frank Wickhem.)

Q. Like that commission that tried Saffrey Brown—were there any lawyers on that Court?

A. I'm not familiar with that commission, Mr. Anthony.

Q. When did you take over your office?

A. July, 1943.

Q. 1943? A. That's right.

Q. And you don't know anything about the qualifications of the Judges before that, do you?

A. Yes, I do, because prior to that time, when I was in the Judge Advocate's Office at Shafter, I used to come down and sit on the bench.

Q. Do you remember Purcell, who used to sit down here? A. Not since I've been here.

Q. At Shafter, Major Purcell?

A. No, I don't recall any Purcell, not in 1942 or 1943, Mr. Anthony.

Mr. Anthony: That's all.

° Redirect Examination

By Mr. Ennis:

Q. Captain Wickhem, will you state the qualifications of some present Provost Court Judges?

[231]

A. Well, Lt. Col. Newkirk is the Provost Judge sitting in Honolulu. He is a practicing lawyer, admitted to the Supreme Court or to the state bar of Illinois, to the Federal District Court, I think it is the Southern District of Illinois. He is a member of a firm of lawyers in Illinois who have an "A" rating in Martindale's. He has been, I'd say, a practicing lawyer there for about 15 years.

(Testimony of J. Frank Wickhem.)

Lt. Col. Jones, who sits on the Island of Kauai, was just prior to his coming in to the Army—I think they referred to them as District Judges in Utah. It is the trial Court of Record. It would correspond to the Superior Court in California. He got his leave of ~~absence~~ from that judicial position to go into the Army. He is a man of some 48 years of age, I guess, and has been practicing law for—this is an estimate, your Honor—but I imagine some 20 years.

Frank Hustace, Captain Hustace, who sits in Hilo, is a graduate of the Harvard Law School. He has been a Deputy City and County Prosecutor in the City and County Attorney's Office of the City and County of Honolulu, and was very instrumental and helpful in formulating and compiling the present revised ordinances that are in use in this city.

Captain Rohrer is a man of about 45 years of age; just prior to coming into the Army he was a Deputy in the City Attorney's Office in the City of Los Angeles and has been practicing law. He is a graduate of the law school of the University of California, has been a practicing lawyer in the City of Los Angeles since [232] about 1928.

Colonel Du Pree is a regular Army Officer. He sits at Schofield, or rather I should say he sits at Pearl City. Now, his experience, I notice in his biography that he has acted in the Judge Advocate's Department in the Territory, was also an assistant Provost Judge in Germany during the time of the

(Testimony of J. Frank Wickhem.)

Occupation. Other than that, I don't believe he has any particular legal background.

The Judge on Lanai is a civilian, Mr. Carlson. Now, he has acted in that capacity ever since the blitz. I believe that the cases on Lanai won't run over—again this is an estimate—but I'd say 20 a month.

The other Provost Judge is Lieutenant Klatt, and he sits at the Kaneohe Air Station. He is a man about 48 years of age; he was admitted to practice in the State of Illinois and has practiced law in Illinois, in Peoria, Illinois, for a period of some 12 or 14 years prior to coming into the Army.

Of course, you have had an opportunity to see Judge Mundo on the stand and to get his—

Mr. Anthony: What do we have here, a general specification, your Honor? Of course, you had an opportunity, but I object to the witness—

The Witness: All right, the one—

Mr. Anthony: Just a minute. I object to the witness doing anything but answering questions.

The Witness: May I answer as to the last Provost Judge, [233] your Honor?

The Court: That's the one you are talking about—yes.

The Witness: Judge Mundo is the last one.

Mr. Ennis: We had his qualifications, yes.

The Witness: Yes, I just want to refer to the fact that he was the only one I omitted.

The Court: Judge Mundo is in Honolulu?

The Witness: Lt. Col. Newkirk sits in Honolulu.

(Testimony of J. Frank Wickhem.)

The Court: That's the one you didn't mention?

The Witness: No, I mentioned him as the first one.

By Mr. Ennis:

Q. Captain Wickhem, is it a fact that Paragraph 3.01 of General Orders 2, as it appears in this printed form which Counsel refers to, has since been amended to strike jurisdiction over civilians between the beginning of darkness, as defined in the regulation, and the beginning of blackout?

A. That's right.

Q. Will you explain that revision?

A. Traffic—after the amendment was made to paragraph 3.01, practically, the only offense by civilians during hours of darkness—that is, one half hour after sunset and prior to 10 o'clock, and from one half hour before sunrise or rather from 5:30 to one half hour before sunrise—during those hours the only traffic offenses that are left, as far as civilians are concerned are speeding and it used to be parking, and of course, parking now has been amended, and lights. Those were practically the only offenses left as far [234] as civilians are concerned.

Q. To be tried in the Provost Courts?

A. Yes, during those hours of darkness.

Mr. Anthony: There is nothing to prevent the Military Governor from getting out an order and making the crime of assault and battery triable in Provost Courts, is that right?

(Testimony of J. Frank Wickhem.)

Mr. Ennis: I object on the ground that it is a hypothetical question.

Mr. Anthony: Precisely, they get out an order—

Mr. Ennis: I object to Counsel testifying.

Mr. Anthony: I'm not testifying; I'm stating what is in this record. Every time the Office of the Military Governor gets out an order that's automatically triable in the Provost Court, and it may cover any subject that is contained in the order. That is a fact, is it not? Any military order can enlarge the offense beyond what now exists, at any time.

Mr. Ennis: I object on the ground that it is hypothetical and argumentative and asking for a legal conclusion.

The Court: Well, the witness has given his interpretation of the Governor's orders, and I think it is a fair enough question.

The Witness: They could.

Mr. Ennis: Exception.

The Witness: They could enlarge the jurisdiction. Mr. Anthony, although there has been an agreement as to the division of powers in compliance with the proclamation of March 10, and there has always been rigid adherence to that. And I would doubt if there [235] would be any general order which would violate that division of authority.

By Mr. Anthony:

Q. I believe that you said that the Territorial

(Testimony of J. Frank Wickhem.)

law in general was followed in regard to punishment?

A. There is a general order which says that the punishment shall be commensurate with the offense, and also the General Orders say that on the whole the Territorial law will be used as a guide.

Q. Guide? A. That's right.

Q. The Provost Courts are not limited to the punishment prescribed in any written law?

A. No, they are not, Mr. Anthony.

Q. Can you explain to the Court how it was that the Petitioner in this case was given hard labor?

A. How it was he was given hard labor?

Q. Yes.

A. Not in the mittimus. It says nothing about that. No, I can't explain that.

Q. That was just an error, was it?

A. Well, I won't say that. I don't know anything about the facts in that particular situation. I know of it.

Q. You are the Commissioner?

A. I know it does not prescribe hard labor.

Q. That's right. And under your system you are supposed to say in the mittimus whether or not the man is to be confined [236] at hard labor, is that a fact?

A. That's right. As a matter of fact, I inquired about that. I don't know that his job was changed until the testimony came out here in Court.

(Testimony of J. Frank Wickhem.)

Q. I see. Captain Wickhem, do you fix policies in regard to punishment other than punishment prescribed by law or which may be considered punishments from which written laws are used as a guide, or such as the donation of blood or anything like that?

A. No, there has been no punishment exacted to my knowledge at any time since I have had connection with the Provost Courts.

Q. That policy was abandoned before you became Provost Judge?

Mr. Ennis: I object on the ground that there is no testimony that there was any such policy.

Q. You recall when part of the punishment used to be a donation of blood here in the Territory?

A. I have heard about that.

Q. Well, you know that's a fact, don't you?

A. Purely through hearsay; not while I've been here. That happened before I was in the Army. It didn't happen while I was in the Army, in any way, shape or form.

Q. Would your records show that?

A. I don't know that.

Q. Do you keep records of the number of pints of blood or anything like that?

A. I have never seen any such records. [237]

Q. And how about bonds that were ordered to be purchased?

Mr. Ennis: Objection.

Q. As a part of the sentence—do you keep records of that?

(Testimony of J. Frank Wickhem.)

A. There has never been any sentence pronounced since I have been connected with the Provost Court like that.

Q. You are familiar with the fact that prior to your connection with the Provost Courts there have been such sentences?

A. Only through newspaper testimony and conversations that you have had here. I don't know it to be a fact.

Mr. Anthony: That's all.

By Mr. Ennis:

Q. Captain Wickhem, a sentence which a Provost Judge may give is regulated and restricted by the General Orders, is not that a fact?

A. Just the maximum restriction of \$5,000 and five years, and General Orders 2 makes a maximum of \$200 and two months.

The Court: What does that relate to?

The Witness: To labor, your Honor, absenteeism.

Mr. Ennis: That's all Captain. Thank you.

Mr. Anthony: Thank you.

(Witness excused.) [238]

ROBERT K. MURAKAMI,

a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Will you state your name and present occupation?

A. Robert K. Murakami, Attorney at Law.

Q. When were you admitted to the bar?

A. In 1926.

Q. Where did you study law?

A. University of Chicago Law School.

Q. When did you receive your degree from the University of Chicago?

A. In the summer of 1925.

Q. Where were you admitted to the bar? [239]

A. In the Territory of Hawaii.

Q. Have you practiced law here since that time?

A. Yes, I have.

Q. In the course of your practice have you been consulted by persons of Japanese ancestry in the Territory concerning their possible citizenship under Japanese law? A. I have.

Q. In what respect has your practice in that field been? Explain it to the Court.

A. Particularly in reference to expatriation of their Japanese nationality.

Q. Persons of Japanese ancestry would come to you as their lawyer to handle their applications for expatriation from Japanese citizenship, is that so?

A. That is true.

(Testimony of Robert K. Murakami.)

Q. Have you, in the course of your practice, had occasion to examine the Japanese law of citizenship? A. Yes, I have.

Q. Have you had occasion to study the Japanese law on citizenship of persons of Japanese ancestry born outside of the Empire of Japan?

A. That particularly.

Q. Have you prepared translations of the provisions of the Japanese nationality law bearing on the question of the Japanese citizenship of persons of Japanese ancestry born outside the Empire of Japan? [240] A. Yes, I have.

Q. And have you those English translations with you? A. I have.

Q. And have you the Japanese text of those laws with you? A. Yes, I have a text.

Q. Will you explain to the Court what the Japanese law is in respect of a person of Japanese ancestry born in the Territory of Hawaii, and explain any changes that have been made in the Japanese law? A. A person—

Mr. Anthony: May I ask this witness a few questions to find out whether or not he is qualified to give this evidence?

The Court: Yes.

By Mr. Anthony:

Q. Mr. Murakami, have you ever studied Japanese law?

A. Only in the sense as a practitioner here in the Territory and getting some correspondence, reading correspondence courses and reading com-

(Testimony of Robert K. Murakami.)

mentaries of Japanese law, and getting whatever information available here and in the Consulate and elsewhere.

Q. You never studied in any Japanese Law School? A. No, I did not.

Q. Have you ever studied in Japan at all?

A. No.

Q. Ever been there?

A. Just for a trip, a short trip. [241]

Q. Will you tell the Court frankly whether or not you hold yourself out as an expert in Japanese law?

Mr. Ennis: I object, your Honor, on the grounds that the witness is being asked to testify about one aspect of Japanese law, not Japanese law generally.

Mr. Anthony: Well, I don't understand that an expert in foreign law can come in and say that I just know the law relating to notary public.

Mr. Ennis: On the contrary, the law is that an expert is usually qualified in one aspect of the law. I doubt that Mr. Anthony would claim that he was an expert in the patent laws of the United States.

Mr. Anthony: I don't claim to be an expert on anything. Well, I'll reframe my question, your Honor.

Q. Do you think that you are an expert on the Japanese law relating to citizenship, nationality, expatriation and those kindred subjects?

Mr. Ennis: I object on the grounds, your Honor, that he is calling for a determination which your

(Testimony of Robert K. Murakami.)

Honor should make. I think the witness is perfectly willing to state what his person is and what his knowledge of Japanese law is. He should not be asked as to conclusions whether he considers himself as an expert.

Mr. Anthony: I'm asking him if he is qualified and to tell the Court.

The Court: You asked him whether he considered himself an expert. [242]

Mr. Anthony: Well, I'll change that. I'll reframe the question. Mr. Murakami, do you think you are qualified in Japanese law to tell this Court what the Japanese law was relative to nationality, citizenship, expatriation and kindred subjects?

The Witness: I wouldn't go about kindred subjects, but I could go only to this extent, that I think I can tell the Court just exactly what the situation is and what the requirements are and how it is done, etc., as to the expatriation of citizens of dual nationality from the Japanese nationality.

Mr. Anthony: Have you ever read a decision by a Japanese court?

The Witness: I have read decisions of the Japanese courts.

Mr. Anthony: Relating to nationality?

The Witness: No, not on nationality.

Mr. Anthony: Are there such things as decisions relating to citizenship and nationality under the judicial system of Japan?

The Witness: I should imagine so, but I don't know.

(Testimony of Robert K. Murakami.)

Mr. Anthony: You have never read one?

The Witness: No.

Mr. Anthony: I object to the witness testifying, your Honor.

Mr. Ennis: Now, let's pursue this question of qualifications a little further.

By Mr. Ennis:

Q. Have you read the statutory provisions of the Japanese law about nationality? [243]

A. Yes, I have.

Q. Have you read Japanese treatises about the law of citizenship? A. I have.

Mr. Ennis: Now, if the Court please questions such as the opposing Counsel has addressed to the witness may go to the weight which is to be given to the witness' testimony. But they do not go to the absolute disqualifications.

The Court: I think that is so. Apparently there is nothing before the Court on the subject. You didn't make an objection to Mr. Anthony's questions? Oh, yes. Now, the last thing was that Mr. Anthony objected to this witness testifying further on the subject.

Mr. Anthony: On the ground that he has not shown himself to be qualified, your Honor.

The Court: Overruled.

Mr. Anthony: With all due respect to Mr. Murakami as a lawyer learned in our law.

The Court: Overruled. (To witness): Have you made any study of the same subject along the same lines as to any other nation, other than Japan.

(Testimony of Robert K. Murakami.)

any European nation, Italy, Germany, France or England?

The Witness: No, your Honor, except to the extent of reading text books concerning nationality and dual nationality, etc., written by American text writers.

The Court: Dual nationality, is it a thing that is peculiar [244] to Japanese laws or is it general in the laws of other countries or any country?

The Witness: I understand that it is not peculiar to Japan. As a matter of fact, it was taken by Japan from continental Europe.

Mr. Anthony: Japanese civil code was based upon the German civil code, was it not?

The Witness: That is so.

Mr. Anthony: That is a civil law country?

The Witness: Yes.

Mr. Anthony: The same as the Italian law, then, or German law?

The Witness: That is true.

The Court: French?

The Witness: French.

The Court: You may proceed.

Mr. Ennis: I request to be marked Respondent's Exhibit No. 10 for identification these four sheets purporting to be English translations of provisions of Japanese law on nationality.

(Received and marked "Respondent's Exhibit No. 10 for identification.")

(Testimony of Robert K. Murakami.)

By Mr. Ennis:

Q. Mr. Murakami, I show you Respondent's Exhibit No. 10 for identification. Are these English translations of the provisions of the Japanese law prepared by yourself? (Showing witness several typewritten sheets of paper) [245]

A. They are.

Q. From the Japanese text?

A. From the Japanese text.

Q. Now, will you state to the Court and explain what the Japanese law is and any change that has been in the Japanese law on the Japanese citizenship of persons of Japanese ancestry born outside of the Empire of Japan, and particularly in the United States?

A. The law, the nationality law of Japan prior to 1916 was that a person that was born of a Japanese father was a Japanese, whether he was born in Japan or in the Territory of Hawaii. In 1916 there was an amendment which made it possible for a person born in a foreign country, that is, a foreign country from Japan, to expatriate or give up his Japanese nationality by taking steps. But that was only limited to those between 15 and 17, I think. But the amendment which is now in effect, and the nationality law as revised now and in effect is that—it came about in 1924, the law of 1924—it made a drastic change in the nationality law of Japan in this respect, that a person born, say, in the Territory of Hawaii of a Japanese father will not be a Japanese, that is, not be a Japanese subject unless

(Testimony of Robert K. Murakami.)

within 14 days from the date of the child's birth his birth is registered with the Japanese Consulate, and at the same time there is shown that there is an indication with the report of birth that the child shall retain his Japanese nationality. In such report and such indication of intention to retain Japanese nationality were [246] not manifested and reported to the Japanese Consulate, then retroactive to the date of the child's birth this Japanese child never acquired Japanese nationality.

Q. What date was that 1924 enactment effective?

A. The act was enacted in 1924 and became effective in December 1, 1924. If, however, the parents reported the child's birth to the Japanese Consulate within the period of 14 days, then, of course, the child retained his dual, that is, Japanese nationality. But such child may later or the parents may later take steps to expatriate the Japanese nationality. This step, that is, this provision of the expatriation was extended also to those who were born prior to the effective date of the act, that is, those born prior to December, '24, in countries designated by the Imperial ordinance, which included the United States and five other western hemisphere countries. And so, by that revision of the nationality law, those persons of Japanese ancestry born in the Territory of Hawaii, let's say, prior to December 1, 1924, could, by making a report to the Home Ministry through the Japanese Consulate, expatriate their Japanese nationality at will, in other words, by their own volition.

(Testimony of Robert K. Murakami.)

Q. In the course of your practice, Mr. Murakami, were you familiar with and have you seen the forms of registration of births with the Japanese Consulate made out by persons in this Territory?

A. Yes, I have.

Q. And it was the practice to make them out and file them with the Japanese Consulate? [247]

A. Yes, for those parents who intended to have the Japanese nationality retained for some reason or other.

Q. Respondent's Exhibit 10 for identification, which I showed you, contains the text of these provisions of Japanese law which you have referred to in your testimony?

A. Yes, only the translation of the provisions as they now stand, that is, with the 1924 amendment.

Q. Yes.

Mr. Ennis: I offer Respondent's Exhibit 10 for identification in evidence.

The Court: Received Exhibit 10 in evidence.

(Respondent's Exhibit "No. 10" was received in evidence.)

[Respondent's Exhibit No. 10 is set out in full as Respondent's Exhibit No. 1, starting at page 526 of this printed record.]

Mr. Ennis: That's all, Mr. Murakami. Just a minute, I think Mr. Anthony wants to ask a question.

Mr. Anthony: No, no questions.

(Witness excused.)

After Recess

(11:40 a.m.)

Mr. Anthony: Your Honor, I'd like to call Mr. Murakami, one of the witnesses for the Respondent, for further cross-examination. Is Mr. Murakami in the Courtroom?

ROBERT K. MURAKAMI,

a witness in behalf of the Respondent, having previously been sworn, resumed and testified as follows:

Cross-Examination

By Mr. Anthony: "

Q. You have already been sworn, have you not?

A. Yes, I have.

Q. Will you state briefly to the Court the difficulties involved in the expatriation of dual citizens of Japanese ancestry?

A. The difficulty is in the fact that a great many of the persons of Japanese ancestry born in the Territory of Hawaii were not registered with the Board of Health and consequently could not get their birth certificates, or they did not have the Hawaiian birth certificates already obtained to prove their American citizenship in order to take the steps to expatriate. So that was one of the obstacles or one of the difficulties which first had to be overcome. And when they did not have those certificates, those of us who were helping them had to let them get the birth certificates first and then,

(Testimony of Robert K. Murakami.)

of course, the next step was to get what is called the copy of the family record in Japan.

Q. Where would they get that from? [249]

A. That would have to be gotten from the village office in Japan from which the parents of the individual came from.

Q. Then, after you got that back from Japan, what would be done with that record?

A. That record, together with the report of expatriation, and also together with the copy of the birth certificate, would have to be filed with the Japanese Consul.

Q. You are talking about cases in which the person is not even registered with the Consul, is that right, prior to 1924?

A. Well, in the case where the person was not registered with the Japanese Consulate, there is the additional or there is another step prior to that. That is to say, the report of the birth of the child had to be made through the Japanese Consulate first. And then—

Q. Even though the child's name was not on the Consul books, is that right?

A. That is true.

Q. Then what would happen?

A. Then we would take the steps to file a report of expatriation, together with a copy of the family record and birth certificate.

Q. Were there any individuals that had no mother or father or no grandfather or grandmother?

A. There were.

(Testimony of Robert K. Murakami.)

Q. How would they get some kind of a document to file with the Consulate? [250]

A. In such event the child had to be—a report of the child establishing a home would have to be made in Japan through the Japanese Consul here. In other words, the child would establish a new home or a new family.

Q. In other words, he'd have to build himself into a new family tree, is that right?

A. That is true.

Q. And once he did that he'd get a record of that new family tree, bring that back here to file with the Consul, is that right?

A. Yes, a copy of that family record.

Q. That would get him on the books of the Consul?

A. Yes.

Q. Then, from there on, you'd start your expatriation?

A. That is true.

Q. How long would that take?

A. Of course, in that extreme case that you last referred to it might take six months or a year.

Q. Was there any resistance on the part of the Japanese of this Territory to going through the process of expatriation?

A. Yes, to some extent.

Q. What was the basis of their objection to expatriation?

A. The biggest objection they had was an argument along this line: Well, I don't want to take any step which would be construed as a recognition

(Testimony of Robert K. Murakami.)

of any Japanese claim on me; and by expatriating or taking steps to expatriate, I would be admitting [251] that the Japanese Government has some claim on me. And I don't want to do that.

Mr. Anthony: That's all.

Mr. Ennis: No further examination.
(Witness excused.) [252]

Honolulu, T. H.

April 11, 1944

9:03 o'clock, a.m.

(The hearing was continued.)

The Clerk: Habeas Corpus Docket No. 298, in the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, case called for further hearing.

Mr. Ennis: May we proceed?

The Court: You may proceed:

Mr. Ennis: General Richardson, will you take the stand, please?

LT. GEN. ROBERT C. RICHARDSON, JR.,

United States Army, a witness in behalf of the Respondent, being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. General Richardson, will you state your full name and your present position?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Robert C. Richardson, Jr., Lt. General, United States Army, Commanding General of the Army ground and air forces in the Central Pacific area.

Q. When did you enter the Army, General Richardson? A. In 1900, June 19, 1900.

Q. General Richardson, will you state very briefly and in chronological order, from 1900, the military positions and [253] experience that you have had?

A. After four years at the U. S. Military Academy at West Point, New York, I was assigned to the Cavalry in the Philippine Islands. I then returned to the United States and was stationed in San Francisco in command of "I" Troop of the Fourteenth Cavalry. For the next four years I was instructor at the U. S. Military Academy at West Point, followed by a tour in the Philippine Islands until 1911. I returned to Texas where I served for three years in the Cavalry on the Texas border, returning again to the U. S. Military Academy as an instructor until the outbreak of the war.

I was then Aide-de-Camp to Major General Thomas H. Barry and was with him and observed in the early part of the European War on the western front. I was subsequently detached in December, 1917, to the American General Headquarters and served in the "G-3" or operations section of GHQ.

I was in command of General Pershing's Advance General Headquarters at Lyon until the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Armistice, at which time I was sent to command the City of Trier, Germany. For quite awhile I was in the Allied Peace Conference, returning to the United States in 1919 for a tour of the General Staff. I then returned to the Philippine Islands in 1921, where I served for two years and one-half on the General Staff of troops.

I was next detached to the Command and General Staff School at Fort Leavenworth, Kansas, followed by two years and [254] a half in Paris at the Ecole Supérieure de Guerre, or the French War College, from which I was sent as Military Attache of the American Embassy at Rome.

I then returned to Fort Riley, Kansas, for a tour of duty with the Cavalry—in which I was detached—and the U. S. Military Academy as Executive Officer; and subsequently appointed Commandant of Cadets, in which capacity I served for four years and three months. I then went to the Army War College, Washington, D. C., for a tour of duty, followed by a tour on the War Department General Staff in the Military Intelligence.

Q. What year was that?

A. 1934-35. I was then appointed Commanding Officer of the Fifth U. S. Cavalry, Fort Clark, Texas, which regiment I commanded for two years and a half. I was then appointed Brigadier General of the Line and assigned to the command of the Second Cavalry Brigade at Fort Bliss, Texas.

I was next detached to command the Cavalry School at Fort Riley, Kansas. For twenty months

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

I served in that capacity, was appointed a Major General and assigned to command the First Cavalry Division at Fort Bliss, Texas.

I was next detached in January, 1941 to organize the Bureau of Public Relations of the War Department for the Secretary of War. After six months in that capacity, I was appointed Commanding General of the Seventh Army Corps, in which capacity I served for twenty-two months. [255]

I was then detached and sent to Hawaii and appointed Commanding General, Hawaiian Department. My title was subsequently changed to Commanding General, Central Pacific Area.

Q. General, will you describe the geographical limits of the Central Pacific Area?

A. The Central Pacific Area includes a sector of the Pacific—the responsibility of the Commander-in-Chief, Admiral Nimitz—in general terms it is a large sector of the ocean north of the equator.

Q. And what are its limits west and east?

A. It extends to the coast of California, to Japan.

Q. And is that Central Pacific Area designated as your command by the War Department?

A. It is.

Q. And in addition to its designation by the War Department is it also part of the command designated by the Joint Chiefs of Staff?

A. It is. It is one of the subdivisions of the Pacific Ocean areas which have been delineated by the directives of the Joint Chiefs of Staff.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. And it includes the Territory of Hawaii?

A. Yes, it does.

Q. At what time was the Central Pacific Area created?

A. On August 14, 1943. Pardon—correction. I was appointed Commanding General of the Central Pacific Area on [256] August 14, 1943. The Pacific Ocean areas were created by direction of the Joint Chiefs of Staff at some time long prior to that, when Admiral Nimitz was given his directives.

Q. Prior to setting up the command, the command of the Central Pacific Area, what was the military command, the Army command, which included the Territory of Hawaii?

A. The designation of the Army command was the Hawaiian Department.

Q. And military command in the Territory on December 7, 1941, was designated the Hawaiian Department, is that correct?

A. The Hawaiian Department, correct.

Q. Will you describe very briefly as a basis for your testimony, General, what the Territory of Hawaii is within your Central Pacific Area, its geographical nature generally?

A. The Territory of Hawaii includes those islands of the Hawaiian group beginning with Kauai and ending with Hawaii; in other words, Kauai, Maui, Lanai, Molokai, and Hawaii—Oahu, of course.

Q. For purposes of the conduct of the war, General, does this Central Pacific Area, including the Hawaiian Islands possess and has it been given any

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
military designation other than the Central Pacific Area? I mean, has it any other designation in military parlance in terms of carrying on war activity here? [257]

A. Yes, this whole area under the command of the Commander-in-Chief of the Pacific Ocean Area, Admiral Nimitz, is an active theatre of war, and within that theatre of war is the theatre of operations, of which the Hawaiian Department is a part.

Q. Will you explain what you mean, from the military viewpoint, by the terms "active theatre of war" and "theatre of operations?"

A. Well, an active theatre of war is that area which is or may become actively involved in the conduct of the war. A theatre of operations is that part of an active war theatre which is needed for the operations either offensively or defensively, according to the missions assigned or a combination of the missions; and it includes also the administrative agencies which are necessary for the conduct of those operations.

Q. From the viewpoint of military science and study, so that we may see the situation of the Territory in the war picture in the Pacific, will you state very generally the strategic and tactical significance of the Territory of Hawaii in the Pacific war situation?

A. From a military point of view, this group of islands is the keystone of the defense of the western coast of our country; beginning in Alaska, with Alaska and the Panama Canal, it forms a

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
large bastion. The security of our west [258] coast depends upon the security of this bastion. And the Hawaiian Islands, of which Hawaii is the most important one, is the apex of this bastion. And, therefore, the preservation of those, and the security of this area, is paramount to the strategic success of our Army and Navy, and also for the defense of our country. Should it be penetrated at any time, we would suffer materially, both tactically and materially, and it would interfere very seriously with the prosecution of the war.

Q. Now, General, turning from the description of the Territory of Hawaii and the Central Pacific Area, will you state what duties have been assigned to you by the War Department and the President in connection with your command here as the Commanding General of the Central Pacific Area?

A. Under my directive of the War Department I have been assigned to command all the ground and air troops of the Army of the Central Pacific Area. And in addition to that, I am to execute and supervise any operations which may be assigned to me by the Commander-in-Chief of the Pacific Ocean Areas. I was also designated, I was also given the mission and designated as Military Governor of Hawaii in my War Department order, which assigned me to this command by order of the Secretary of War.

Q. Now, in addition to your delegation of authority from the War Department, did I understand you to say that you [259] also have authority delegated to you by the Commander of the Entire Pacific Area, Admiral Nimitz?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Yes, sir, as Admiral Nimitz has responsibility for the entire Pacific Ocean areas which includes, of course, the Central Pacific area, as a segment of his command. He has delegated to me the immediate responsibility for the security of these islands.

Q. In connection with your official duties to carry out the military mission you have described, have you become familiar with enemy actions in your command and in the Territory of Hawaii?

A. I have attempted to familiarize myself with every single detail of the enemy action.

Q. Could you state in a general way what enemy actions have occurred and are probable and likely in this Territory?

A. We are all very familiar, of course, with the tragic events of December 7, 1941, when the Japanese suddenly attacked the Hawaiian group. We know that it is still within their capability to make an attack of that nature. They are also capable of coming here in submarines and executing raids of a various character, with a view of destroying our installations or obtaining information which is much more valuable than the destruction of any installations.

Q. Well, now, General, insofar as the requirements of military secrecy will permit, could you state to the Court [260] any recent enemy action in this Territory?

A. I might review for you, in order to give you the complete picture, the activity of the Japanese

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
in the Hawaiian group. Subsequent to Pearl Harbor there was great submarine activity in these waters. Between December 7th and December 31st, there were innumerable reports of the presence of submarines. The records will show that between December 7th and December 31st Kahului was shelled twice by submarines. On December 30th, the Port of Hilo was shelled; December 30, 1941, by enemy submarines. And on the following day, December 31st, the submarines shelled Nawiliwili, Kauai. On January 28, 1942, an Army transport, the "Royal T. Franks," was sunk by a torpedo from an enemy submarine on a channel between Kauai and Maui. Subsequent to that date there have been recurrent reports and verifications of the presence in these waters of enemy submarines.

To illustrate: Since last March, one year ago, we have official records of the presence of 30 submarines in these waters, the last one on March 10, 1944, just a few weeks ago, within 20 miles of Oahu. In addition to that, there has been aerial activity in this area since the attack upon Hawaii. We have definite records of the presence of two airplanes, at least, and possibly two others. We know that on March—the night of March 4th and 5th, an enemy plane or planes—

Q. What year is this, General?

A. 1942, nearly two years ago—launched probably from [261] enemy submarines, and dropped bombs on Tantalus Hill. As recent as October, 1943, just prior to the Gilbert operations, an enemy

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
plane, probably launched from a submarine, reconnoitered Pearl Harbor at night at a time when the entire fleet was concentrated in those waters preparatory to the sortie for the attack upon the Gilbert Islands.

Q. From a military point of view, is secrecy a prime element of success in such an attack?

A. It is of paramount, transcendent importance. And, even though that airplane did no damage to the Island of Hawaii nor disturb the activity and the routine of life here, had it succeeded in getting the information of the presence of this fleet and transmitting that information to the enemy, it might have caused more damage than the *construction* of this whole port.

Q. From the viewpoint of the military authorities, do the activities that you have mentioned, air and submarine reconnaissance, constitute the waging of war in this Territory?

A. In my judgment as a soldier, I consider that they do.

Q. Now, do your official responsibilities here require you to make military appraisals of the possibility of an attack or an invasion against these islands?

A. Yes, we not only make appraisals but we make them constantly and periodically. We make what is known as an [262] estimate of the situation, which I might explain from a military point of view as estimating the capabilities of the enemy and what you might do to him in view of your assigned

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
mission; the means that are at your disposal for that execution, and the means at the disposal of the enemy for the execution of his mission, taking into consideration, of course, all factors of terrain, weather, etc. We then analyze the lines of action which are open to the enemy and the lines of action that are open to ourselves, and weighing those two we come to a decision. That is known as an estimate of the situation.

Q. Well, have you applied that military function of estimating the military situation to your command here? A. I have.

Q. Well, now, would you state, General, some of the major military factors that enter into your estimate of the military activity that is required of you here?

A. Being charged, as I am, with the immediate security of the Hawaiian Islands, under the directive from the Commander-in-Chief, I naturally try and project myself into the mentality of the Japanese commanders, in order to deduce from their estimate as to what they might do and why they should wish to come to Hawaii and launch an attack against these islands. From that deduction I might point out certain factors which should be very attractive to the Japanese High Command.

In the first place, we have here in the Hawaiian Islands the United States fleet, based in Pearl Harbor. This is a [263] large body of water which offers to the fleet a safe anchorage for rest, recuperation, but above all, for repair; it contains, as

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
you know, dry docks, storage facilities, large shops, fuel, supplies, and everything that is necessary for the fleet to prosecute this war.

Therefore if the Japanese could cause any damage to this installation or cause any damage to the fleet units when they are at anchorage at the base, they would succeed in interfering to a disastrous degree with the prosecution of this war. Pearl Harbor today is the most attractive target for an enemy, and in waging war with the Japanese it is in my judgment the most remunerative target in the world today. In addition——

Q. Well, now, are there other military targets in addition to the target available here?

A. In addition to the transcendent importance of the security of Pearl Harbor and the fleet, the Japanese know perfectly well that we have here a large air base, that we have built many fields, that we are concentrating planes at this base, that we are building up our supplies for the prosecution of the war, that Oahu is the center of our communications system for the Pacific area. And, therefore, putting all of those factors down and weighing them, it is such a tempting prize that I know they are not overlooking it now. It may be held in abeyance for the moment, its capture or the [264] attempted capture, but it is certainly in the minds of the Japanese High Command.

Q. Well, do you weigh their capabilities of their approaching such a prize. Is that a factor in your judgment?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. It is decidedly a factor. The Japanese still have the capabilities of launching an attack against this place. We have not—although we have injured the Japanese fleet, we have disturbed shipping—we have not destroyed their capabilities of attacking Oahu.

Q. Well, in view of the successes of our own fleet, General, could you explain how in your appraisal you consider that the Japanese would be able to make such an attack? Would you be more specific about that capability that you mentioned?

A. We know that the Japanese fleet has not been destroyed; it has never come to grips with our own fleet; it has suffered some damage, just as our fleet at times has suffered damage. We know they still have a number of carriers; and we know that it is well within their capabilities of launching a surprise attack against Oahu and Pearl Harbor as they did on December 7, 1941.

Q. How would the Japanese go about launching such an attack and keeping it a surprise? How could they from a military point of view keep it a surprise?

A. Yes, that is perfectly possible. The Pacific Ocean is a very large area. It is impossible for our Navy to cover [265] the surface of that ocean either with surface vessels or with air. They could organize task forces, maintain radio silence, move into this area under the protection of a storm or what is known as a cold front, or a zone in which the cold air from the north meeting the south air

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
from the warm air from the south constitutes a large zone of mist—hide in that front and approach very closely to Oahu and escape detection despite all of the technical devices which have been placed at our disposal, such as radars for the detection of such a force. These devices have their limitations. The Japanese know what they are, and would exploit them and stay out of range of our electric detecting devices.

Q. Well, now, is this cold front that you mentioned an unusual or usual weather phenomena?

A. No, that is a very usual weather phenomena. It occurs all the time; the periodicity is, you might say, regular.

Q. Now, in addition to enemy capabilities to strike from a carrier force, is there any other important way in which the Japanese enemy could attack this Territory?

A. Yes, there are several other ways in which the Japanese could attack this Territory. In the first place, they could make use of their submarines. In the new technique of warfare the use of the submarine has been highly developed. They approach within hostile shores at night, launch rubber boats, send parties ashore for information. One of our greatest problems is the installation of the security of these islands, [266] and the only way that security can be maintained is by the strictest exercise of counter intelligence to prevent the enemy from gaining any knowledge of our activity on these islands, of our intentions.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. By counter intelligence you mean that branch of military intelligence which seeks to prevent the enemy from obtaining knowledge of your operations?

A. Exactly.

Q. I see.

A. In addition to that, we have here in these islands, as you know, one-third of the population which is mixed; 33 and 1-3 of the population of the Hawaiian Islands is of Japanese blood, and therefore there is within that group potential danger of the transmission of information to people of their own race. From submarines could be launched small parties, reconnaissance parties; they could mingle with the population here, completely undetected, and obtain information which would be of such value to the Japanese High Command that it would transcend any attack launched here with a few bombs.

Q. Well, in addition to sending persons aboard for espionage purposes, are so-called commando raids or raiders from submarines feasible in your military experience?

A. Those are perfectly feasible, and it is a very common practice for submarines to launch commando raids, which would attack our installations, radio, radar, supplies [267] of oil.

Q. Have our own forces used that technique of commandos from submarines?

A. We have used that to a limited extent, but we have used the technique in a very valuable way prior to the occupation of Africa.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. You refer to our contact with the French?

A. With the French in Africa, where all the preliminaries were arranged which meant the saving of a great many American lives.

Q. Well, now, General, you have mentioned the character of the population in this Territory. As I take it, that is a military factor in appraising the possibility of attack or invasion here?

A. It is a most decided military factor. It is absolutely necessary that the military commander in this area have some means at his disposal for controlling the movements and the activities of people whom he suspects may be potentially disloyal. Of course, my remarks do not apply to the entire Japanese population. But it would be naive to assume that in a population of 160,000 that we did not find a group of potentially disloyal Japanese. As a matter of fact, we know that some of them are not loyal to America. They have so stated when they have been brought before the internment boards. And I have been forced to put them in internment [268] camps for the security of these islands.

Q. Will you explain what your internment program is and how it relates to military security?

A. Under the operation of this very modified form of martial law which exists in the Territory, we have an internment camp for interning, ~~whether~~ they be citizens or aliens of any blood, of those whom we suspect of disloyalty and who are necessary to be incarcerated for the security of these islands. When the finger of suspicion is pointed at any one

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) of them, they are brought before a hearing board, which is composed of three citizens of this community. The recommendations of that hearing board are then referred to a board of officers composed of a representative of the Naval Intelligence, of the Military Intelligence, and of the F.B.I. The recommendations, then, of both of those boards are forwarded to the Office of the Military Governor, where they are reviewed and final determination passed, whether the accused be placed in the internment camp, whether he be paroled or whether he be released.

In addition to that, the record of every man in the internment camp is periodically reviewed every Thursday afternoon by the hearing board of the Office of the Military Governor. And we release or parole on an average of five or six a week. During the month of March we were forced to intern, I think it was 41; I am not sure but I have the figures. [269]

The Court: Which year?

The Witness: This year, sir, March of 1944, this past month.

Q. As I take it, a large number are interned, and they keep coming in and going out as you find you can parole them?

A. That is true. On the whole, we have interned since the beginning of the war 1,396, a number of whom have been sent to the mainland.

Q. Now, they include citizens as well as aliens

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
and persons of Japanese blood or persons of other blood? A. Yes.

Q. Depending upon the particular facts that your intelligence service calls to your attention?

A. Exactly.

Q. I see. Do you find among the Japanese any particular group of citizens among whom you are likely to find persons who are not loyal?

A. As you know, the Japanese might be placed into several categories: there are the aliens, pure and simple; there are the Japanese who were born here and are American citizens; there are other Japanese who have been expatriated, and those have been born here but registered by their parents in the Japanese Consulate and upon whom the Japanese Government professes to exercise a certain degree of loyalty and allegiance.

Q. You are familiar with the group of American-born [270] Japanese educated in Japan also, are you not?

A. Yes, a number of whom have been born here and have been sent back to Japan for their education, which they received, and all their impressions have been formed during their adolescent life.

Q. They are known as the Kibei?

A. Yes, that is the name.

Q. Now, General, is it your experience that in addition to finding persons whose loyalty to the United States is questionable, either in the Japanese part of the population or the other part of the

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
population, that you do find individuals in that part of the population who are entirely loyal?

Mr. Anthony: If the Court please, I have listened at great length here to what I consider as irrelevant testimony to the issues in this case. I would like now to interpose an objection to his testimony. As the Court knows, and Counsel knows, under the Federal statute any person whom a military commander desires to have excluded may be excluded by the operation of the statute upon application made.

Mr. Ennis: If the Court please, on the particular question to which Counsel has objected, I think that it is fair that if the Military Governor, the Military Commander, in the course of his duties and in the course of his military experience generally, has not considered part of the population as having given specific loyalty, that in fairness to that [274] population that should be brought out in the testimony. And it seems to me it is rather a curious question for Counsel to object to.

Mr. Anthony: I think the whole line is irrelevant, your Honor. We are trying a comparatively simple issue here, whether this Petitioner is entitled to a trial by jury for an ordinary act of assault and battery, assault and battery under the Federal statute. I don't see the relevance of this.

The Court: Well, we have entertained quite a volume of immaterial matters, without passing on it. You may proceed, General.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The Witness: - I would like to say that there are thousands of Japanese here whom I believe to be very loyal, absolutely loyal. They have shown that loyalty on innumerable occasions. One of the most outstanding examples of their loyalty has been the very patriotic response to the colors of the Japanese when they were asked to volunteer. Their conduct on the field of battle in Italy leaves nothing to be desired. And it is inconceivable that their parents and their relatives, who have so willingly given these men, their sons, for the cause, should be disloyal to the United States.

Q. Now, General, in appraising the military situation, including the military factors you have mentioned, how do you wade into the picture the recent great successes of our fleet? Does not that diminish greatly the risk of an attack which you [272] have described?

A. The reasons for the success of our fleet lies in the fact that we have been secure in this base. It is from this base that the fleet is mounted, that all of our operations are mounted. It is here that is the heart of the operations of the Pacific Ocean areas. If you take any action which is injurious to that heart, you paralyze the activity of the fleet. It might seem, I know, to the layman that when the fleet is far out in the Pacific Ocean areas achieving successes in the Marshall Islands or achieving successes at Panau, that the danger is removed from Oahu. On the contrary, the danger has increased. And I know, as the Military Commander who is

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
responsible for the security of these islands, that when the fleet returns to Oahu the danger increases; that I never go to bed at night when that fleet is here, or even any other night, without wondering, Have we taken every single precaution to exercise the authority conferred upon me in the discharge of my responsibilities?

Q. In other words, these successes, from the military point of view, in your opinion, do not lessen the danger of an attack on these islands by the Japanese?

A. Indeed, they do not, and that cannot be said too emphatically.

Q. Now, General, turning to the subject of the provost courts, which Counsel has mentioned, will you state how you [273] perceived the provost courts to be part of the military security system?

A. Well, in order to enable me to discharge my responsibilities under this modified form of martial law, and in order to achieve the security which is the only reason really for the prevalence and existence of the modified form of martial law here, I am concerned, as a soldier, with my duties of security.

We have been obliged to publish regulations for the control of firearms, for the control of ammunition, for the illegal possession of radios, for the illegal possession of cameras, for the institution of the curfew, for the institution of the blackout, for the ejection of undersirables from restricted areas. In order to enforce those regulations, I must have at my disposal some sort of tribunal to that effect.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Under the rules of martial law, we are authorized to appoint what is known as provost courts. These provost courts are nothing more or less than police courts. The layman might say, Why not do away with them? I personally have given great consideration to the elimination of provost courts, in order to try and carry out the directions of the President when he approved the suspension of the privilege of the Writ of Habeas Corpus and also the continuation of martial law in this Territory last, hoping that I would be able to do away with the provost courts and turn the trial of those offenses over to the civil courts. But upon examination of the circumstances I found that it is impossible for the civil courts to try [274] them because they are not offenses against Territorial laws, nor are they offenses against any known Federal statute.

Now, in rebuttal it will probably be said, But under the Organic Act the Governor can publish regulations for the punishment of infractions of these offenses.

Q. Under the Hawaiian Defense Act?

A. Under the Hawaiian Defense Act, as he did in the curfew and the blackout. But I should like to point out that in that instance—assuming that he did/and that they were perfectly legal—then the violation of any of those offenses would have to be referred to a civil court for trial, with its concomitant delay. The military are the ones that detect these offenses. The military hold the witnesses, as a rule, and therefore we cannot brook a delay.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

And there must also be in the punishment a certain measure of retribution. The punishment must be swift; there is an element of time in it, and we cannot afford to let the trial linger and be protracted.

Again, to give another illustration, assuming that the Governor did publish regulations to this effect, I am forced then to be subjected, as Military Commander responsible for the security of these islands, I am forced to the control of another official for the enforcement of my regulations. To illustrate, well, suppose that we did turn them over to the civil authorities and that I had set the curfew, or the Governor had set the curfew at 10 o'clock. An emergency arises, and [275] I feel that it should be changed instantly to 8 o'clock. I call upon the Governor. He says, No;—not arbitrarily but because he has a very honest difference of opinion—no, I think it should remain at 10 o'clock. And he refuses, therefore, to modify his order. What am I to do as Military Commander responsible for the security of these islands? The only resource left is to reinvoke martial law, and then we are back where we started.

Q. Well, Counsel mentioned the power to set up a military area under Executive Order 9066, and to promulgate regulations in that way. Would that meet your problem of military security?

A. No, it would not, for the following reason: We will assume that we are operating under Executive Order 9066. All of the offenses which are con-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
tained therein, if violated by anyone in this Territory must of necessity be referred to the civil courts. The Military Commander, then, is subjected to all sorts of influences, political and otherwise, as happened in the cases on the east coast in both Philadelphia and Boston, when the Commander of the Eastern Defense Command ejected what he considered undersirable persons from the areas, and he was overruled by the courts and they were put in.

Now, in an area of this character, the Hawaiian group, which is an active theatre of war and which is in the theatre of operations, it is inconceivable that the Military Commander [276] should be subjected for the enforcement of his orders to the control of other agents.

Q. Well, I take it, General, from the military viewpoint, then, you believe that your responsibility for the military security requires that you have an agency under your control to enforce your military security regulations, is that what it comes down to?

A. I do.

Q. Now, General Richardson, based upon your appraisal of the military situation, will you state your opinion as to whether or not there is imminent danger of invasion of this Territory by the Japanese enemy?

A. I shall state from a soldier's point of view the actual reality of the situation, without attempting to argue or define the academic definition of "imminent danger of invasion." We know that, at

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

least we feel quite certain that the Japanese are totally incapable of coming to these islands with a large land-based force for the purpose of seizing and capturing it. We do not think that is within their capability at all. The time for that is past. And, therefore, if that interpretation is paramount in the mind of the layman, it may be eliminated. But you must remember that in law, as in other branches and other professions, times change. There are new developments. When that phrase was written, "imminent danger of invasion," nor the submarine, nor the airplane were in existence, nor were they ever dreamed [277] of. These two new weapons of war have enormous potentialities, and they have introduced into warfare the element of stealth, the element of surprise, and the element of speed. And, therefore, capitalizing on those new elements of warfare, our enemy, the Japanese, has at his disposal today a strong carrier force, destroyers, cruisers, battleships, and airplanes, and submarines, all of which combine those elements of stealth, surprise and speed.

Therefore, they still have the capability of launching an attack, an invasion by air, an invasion by undersea, against these islands. And they have not only the capability itself; it is always impending, as long as their capability exists, the danger impends and the danger is imminent.

Mr. Ennis: I request this be marked as Respondent's Exhibit for identification, No. 10. (Showing a typewritten document.)

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

The Clerk: No. 11.

Mr. Ennis: No. 11, an account of an interview given by General Richardson to Eugene Burns, Associated Press War Correspondent; and as Respondent's Exhibit for identification No. 12, the somewhat abridged account of that interview published in the Washington Sunday Star of November 14, 1943.

The Court: Any objection?

Mr. Anthony: I have no objection, your Honor.

The Court: Received as Exhibit 11—there are two documents? [278]

Mr. Ennis: There are two documents, your Honor, and we might mark them as you have them presently.

The Court: Exhibit 11-a and 11-b.

(Received and marked for identification Respondent's Exhibits 11-a and 11-b.)

The Court: You don't offer these in evidence?

Mr. Ennis: I only marked it for identification.

The Court: Very well, it may be marked for identification, then.

Mr. Ennis: But, if the court please, there is no objection by Counsel,—

Mr. Anthony: I have no objection.

Mr. Ennis: So I do offer them.

The Court: Received in evidence, then, as Exhibit 11, a and b.

(Respondent's Exhibit 11-a and 11-b was received in evidence.)

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

[Respondent's Exhibit Nos. 11-a and 11-b are set out in full as Respondent's Exhibits 8-A and 8-B, starting at page 529 of this printed record.]

By Mr. Ennis:

Q. General Richardson, based on your knowledge of facts, from the military viewpoint, was there an actual invasion of this Territory on December 7, 1941, by the Japanese enemy?

A. In my judgment, there was.

The Court: May I have that question?

(The Reporter read the last question.)

Q. General Richardson, I call to your attention Respondent's Exhibit 11, a and b, in evidence, and ask you to [279] examine it, and then will you state whether on any occasion prior to this trial have you testified, or rather, have you stated publicly that there was a danger of attack on this Territory? (Handing witness a typewritten document.)

A. Yes, I can identify these documents as the transcript of an interview which I gave to Eugene Burns, the Associated Press Correspondent, in which I expressed the view then, in November.

Q. Last November?

A. Last November, 1943, that I thought that there was a danger, constant and impending, of the Japanese attacking Oahu.

Mr. Ennis: That is all General. Thank you.

The Court: You will probably be subjected to cross-examination. Do you want a recess?

The Witness: No, sir; I'm perfectly all right.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Cross-Examination

By Mr. Anthony:

Q. General Richardson, would you say that Germany is now being invaded by virtue of bombings that are being conducted?

A. Indeed, I would. I don't know how Germany could be invaded in a more catastrophic manner.

Q. And would you also say that the British Isles are now being invaded? [280]

A. They are, periodically.

Q. And, if it is true that our submarines are plying the home waters of Japan, then Japan is being invaded by us, as you used that expression?

A. I am sure that the Japanese regard the presence of our submarines in their waters as an invasion of their sovereignty.

Q. I am not asking what the Japanese think about it. I'm asking you what you think about it.

A. I think so.

Q. Then you disregard entirely the notion of an occupation by land troops in the course of an invasion?

A. No, I didn't say that.

Q. You don't think—

A. Nor do I disregard that. That is one of the factors involved, but it is remote. It is remote.

Q. I didn't get that.

A. It is remote.

Q. I notice, General, in the "Rules of Land Warfare," Field Manual No. 27-10—I don't know whether you are familiar with that or not. Are you?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Well, I read it from time to time.

Q. Well, this isn't so old. It was published in 1940, General. This is what the manual says——

Mr. Ennis: What page is that, Mr. Anthony?

[281]

Mr. Anthony: Page 74. (Reading.)

"The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it cannot be said that such district is under his military occupation."

I gather that you don't use the word "Invasion" in the same sense that they use it in the "Rules of Land Warfare."

A. I'll reaffirm what I stated in my direct testimony, that I personally am not concerned with the definition of invasion, or any of the terminology in the books. That, to my mind, is purely academic, and that's a matter to be decided by the courts. I am here to state, as a soldier, what I believe to be the conditions in this Territory which necessitate the continuance of the authority which I now exercise under this modified form of martial law.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Now, General Richardson, it is true, is it not, that the front combat areas in the Pacific are some two thousand or twenty-four hundred miles away from Oahu, is that a fact?

A. No, that is not a fact. I have stated in my direct testimony that a portion of the combat areas are forward or west of here, but I consider the Hawaiian Islands in the combat zone.

Q. I don't believe you said that in your direct examination, [282] General Richardson.

A. Well, then, I should like to say it on cross examination.

Q. What you said on your direct examination was that the whole area was an active theatre of war, and that Hawaii is a theatre of operations. I understand you now to say that this is a combat area.

A. Well, but the theatre of operations, Mr. Anthony, it comprises the combat area. If I might define that for you—

Q. Yes, I am very ignorant of this.

A. I don't mean to infer that you are. But the theatre of operations is a delimitation of the active war theatre. Now, the theatre of war which is designated by the Joint Chiefs of Staff is subdivided into theatres of operations. This whole Pacific area is a theatre of war, but they have theatres of operations under General MacArthur, under General Stilwell in India, and we have one under Admiral Nimitz in the Pacific Ocean. So the theatre

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
of operations includes the terrain where the Armies operate.

Q. Is there any military parlance that indicates that portion of the earth's surface where the fighting actually takes place? A. Yes.

Q. What is that called?

A. Combat zone. [283]

Q. You would not call Hawaii a combat zone?

A. Yes, I would, because the theatre of operations or the combat zone also includes that part assigned to your mission, whether it be offensive or defensive. We are on the defensive mission here in Oahu, whereas the fleet operates offensively from here, and some of our troops which are based here operate offensively from this base. But concurrently with its mission as an offensive base, we have a very decided mission here as a defensive base, and that defensive mission designates or characterizes it as a part of the combat zone.

Q. Then a combat zone can be an area where no shooting is going on at all?

A. Oh, yes; oh, yes.

Q. No real destruction of life or property?

A. Absolutely. In France I used to wonder sometime if we went to a picnic there in the front lines.

Q. Well, do you have any term, military term, that precisely fits the place where life and property is actually being destroyed as a result of organized warfare? A. Yes, the battle.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Battle? Where is the battle in the Pacific at the present time?

A. It is in various places.

Q. Well, we are informed through the communiques that we have shoved the lines west of the Marshall Islands. That, I assume, is correct. [284]

A. I don't know what communicate you are referring to.

Q. The communiques of the Pacific Fleet Headquarters, which have announced the occupation by the military and naval forces of the United States the Marshall Islands. That is correct, is it not, that we now hold those islands?

A. Yes, mostly.

Q. We also hold the Gilbert Islands?

A. Yes.

Q. How far are the Marshalls from Hawaii, General, roughly? A. About 3,200 miles.

Q. Is that nautical miles or land miles?

A. Nautical miles.

Q. It is also true that we have pierced further into the defensive ring or are continually attacking Truk, according to the reports that come to us from the communiques, is that a fact?

A. We are continuing the offensive against the Japanese. The targets vary from day to day.

Q. But the targets are west of the Marshall Islands, are they not? A. For the moment.

Q. Are there any east of the Marshall Islands?

A. At the present time I know of none except

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
within the Marshall Islands; we have a number of targets against which we are operating daily. [285]

Q. Sometimes mopping up there?

A. I won't say it was mopping up.

Q. Well, do I understand you to say that the farther the fleet pushes the enemy west in the Pacific, the more danger there is here in Hawaii?

A. I do, most decidedly, and I cannot repeat it too emphatically.

Q. Well, General, that's a little difficult for a layman to understand.

A. Well, let me try and explain it to you.

Q. I wish you would.

A. I can well understand that a layman would hold the point of view that you have just expressed. But you must remember that in order to keep that fleet going there has got to be a motive force, a motor, so to speak; that motor is located here; the heart of the operations of the Pacific Ocean is right here in Oahu and is going to remain here until the end of the war. When the old knights went into battle, what did they protect first? They put armor around their hearts, because their arms and their feet and their eyes and the rest of their bodies were useless unless that heart was protected. Analogously, our aviators today have been provided with a breastplate. Why? So as to protect the vital areas of the body.

The most vital area of this whole Pacific Ocean area is Oahu, and it is going to continue to be the most vital area [286] until the end of the war. And,

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
therefore, while it may appear to the layman that our fleet is gaining great successes as we go west, those successes are absolutely dependent upon this place, and the paralysis of this place would render completely useless that fleet which is so successful today in the West Pacific.

Q. Well, you have told us, General, that in your judgment the Japanese couldn't organize enough force in the Pacific to capture Oahu.

A. I did not say that. I said——

Q. I understood you to say that.

A. I beg your pardon. I said that the capability of the Japanese today organizing surface-born vessels, transports accompanied by war vessels, to bring to these islands a force for the invasion of these islands is remote. We do not think that they are capable of doing that now.

Q. Is it a fact that the high tide in Japanese aggression was reached in the battle of the Coral Sea and in Midway in the Pacific?

A. I believe this, that the Japanese came down to Midway with those transports and with that navy with the idea of seizing Midway, occupying it as a jumping off place for the occupation of these islands. And, therefore, when they were defeated at Midway, their chance of organizing this ocean-borne force, of which we have been just talking, failed; and from [287] that day to this, they have never been able to recuperate sufficiently to warrant them taking the risk. But they have the capability

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

if they want to take it. It may not be as strong as they would like to have it.

Q. It is a fact, is it not, that our Navy has increased tremendously since that time?

A. It has increased appreciably.

Q. As much as ten-fold?

A. I am not in a position to answer that question.

Q. I see. General Richardson, getting down to the business of this case, I would like to have your views as to why, what is the military reason that requires the trial of what is an offense under the laws of the United States, of assault and battery, down in the provost court? What is the military reason?

A. Well, in this particular case I can well understand that the layman would think that it was an ordinary street brawl. The young man in question, however, did not attack a simple citizen walking along Kamehameha Highway or any other place in Honolulu. He interfered with the assigned duties of a sentry in time of war. He assaulted two marines. He exercised his privilege, I am told, of getting drunk, losing control of himself, and trying to force himself into one of the installations here, with which both the Army and the Navy are charged with absolute security.

Q. Who told you that? [288]

A. It was published in the papers. I read it.

Q. Very well.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Testimony of the marines. Therefore, Mr. Anthony, it is not an ordinary street brawl.

Q. What's the military reason, in your opinion?

A. Because we have to uphold the authority of the sentinels, which we place there. That sentinel may have shot that man. He would have been tried by Courts-Martial and I have no doubt that he would have been acquitted. You must remember that when we placed a sentry on duty, that young man has very grave responsibilities. Day after day, my Judge Advocate brings up to me records of Courts-Martial where these young boys have fallen asleep on posts. It seems tragic at times to have to punish them with sentences of three to five years, but we have to do it in time of war. Upon their alertness, Mr. Anthony, depends the safety and the welfare and the lives of hundreds of others of their fellowmen. This young man interfered with the sacred duty of a sentry.

Q. Well, that is a matter of dispute in this case, General Richardson. What I am trying to get from you is, why do you think we have got to have the provost courts? You first said that on account of the delays of the civil courts. Is that one of your reasons? A. That is one reason, yes.

Q. You know that to be a fact, that there are delays in the civil courts of this Territory? [289]

A. I would not say in the civil courts of this Territory because I am not familiar with them.

Q. Well, that is what we are talking about.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. But I say this: I draw on my general experience.

Q. Well, is there anything else besides the delays of the civil courts?

A. Oh, yes, there are many reasons why we should have control under the provost court system. I thought I outlined that very elaborately in my direct testimony.

Q. One of the things you said was that you had to have some instrumentality to enforce your orders?

A. Yes, which are not offenses against the Territorial Courts or the Federal Courts.

Q. You are familiar with the fact that they could be made such?

A. But, as I said, even though they were made offenses, I would still have to go before the courts, the civil courts, which is objectionable when the offenses are of this character that rest upon security. And you place the Commander, then, of the area under the control of other agents for enforcement of his regulations when he has the responsibility of security. Are you going to take the responsibility for the security of these islands? Is the Court going to take the responsibility for the security of the fleet? Is Governor Stainback going to take the responsibility for the security of the fleet? No. I have it. And, nor my conscience and nor my duty will ever [290] make me say that I don't need the authority that goes hand in hand with my authority.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. You make no distinction between the trial and conviction of a non-military offense and your mission as a soldier to defend these islands and to project the offensive to the west?

A. All of these incidents, including this one, are integrated in that general security program. We cannot make those refinements and distinctions when we have those responsibilities. And you would take away from me and weaken my authority.

Q. Do you think that that would interfere with the progress of the war?

A. I do, most decidedly.

Q. If I may finish the question, if a person who is charged with, I still say an offense against the laws of the United States, was tried before a jury and we found out whether or not this man was telling the truth or the marine was telling the truth, would that weaken your authority?

A. Then why don't you refer every case that goes before the police court to a jury? Have you no confidence in the integrity of the provost judges? They are very carefully selected. You must remember that those provost judges are Americans just like you, only they have on a khaki uniform. They came from civil life, and when this war is over, they are returning to civil life, and they are just as watchful and [291] jealous of the civil liberties of our citizens as are you. I am also. I, Mr. Anthony, could well understand that the layman would object to the exercise of an authority by a Commanding General through the instrumentality

X

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
of a provost court, if there were any abuses. But there are no abuses in the provost courts. On the contrary, the provost courts have been administered with a super-abundance of consideration for all concerned. They have been exercised with discretion.

Q. I am sure you are painting a much rosier picture than you would if you knew all the facts.

A. I think I do know the facts, because I confer almost daily with my Executive Officer, Colonel Morrison, on provost court procedure.

Q. General Richardson, do you know any of the facts as to the operation of the provost courts before you came down here?

A. I am not familiar with what preceded my entry into this theatre.

Q. You know nothing about the meting out of five-year jail sentences for ordinary misdemeanors?

Mr. Ennis: The witness has answered the question, your Honor.

Q. General, your article in the Army and Navy Journal, you have prepared that yourself?

A. That is not a fair question.

Q. Why, I didn't mean to be unfair, but do you approve [292] the views expressed in that?

Mr. Ennis: Which article is this? (Mr. Anthony shows Mr. Ennis a photostat.)

Q. Do you recognize this as your article? (Handing witness a photostat.)

A. Yes, I do.

Q. And you believed the statements that you made in this article at the time you stated them, did you not?

A. Yes.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. And you still believe them?

A. I'd have to refresh my memory on the statement to which you are going to refer.

Q. Well, you state here, for instance, about the Japanese:

"The dangerous and potentially dangerous aliens and citizens have been arrested and interned by the Army. The remainder have proved on innumerable occasions that they are loyal to America."

A. Well, of course, that's a statement, Mr. Anthony, of very general character. When you are writing an article such as that, it is impossible to go into all the details and say that so many thousands are loyal, so many thousands are suspected of being potentially disloyal, etc. I brought out in my direct testimony the opinion that I hold of the loyal Japanese, but I also reiterate that in this community I am positive that there are many potentially disloyal Japanese.

Q. Simply because of their racial ancestry?

[293]

A. No; that is one factor; but for the reason that we are constantly picking them up day after day and bringing them before our hearing board, and they admit that they wish Japan to win the war. We have never had a Japanese come up and tell another Japanese that he is disloyal. They will come and testify as to their character or their activity, but they will never impugn the loyalty of one of their own. And that does not happen with the Germans nor does it happen with the Ital-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
ians. our other enemies. Therefore, we have a right to be suspicious; and I, charged with security, it is my duty to exercise a super-abundance of caution.

Q. Getting back to why we can't try these offenses either under a Federal statute or Territorial statute, I believe you said the trouble in Federal Court was that there were political influences such as existed on the east coast of the United States.

A. I said influences, political or otherwise. I think that—

Q. Are you fearful of that in this area?

A. Always. I am fearful always of political influences because that is what life is. Our whole life is political. There is hardly a problem that comes up to be solved in this community that there are not pressure groups of all sorts; they come into my office every day.

Q. General, is there any reason, any fact that exists [294] down here that wouldn't make all of these things, as you say, fully applicable as to what ought to be done in California or Maryland or Pennsylvania?

A. I don't think I quite understand the question.

Q. As I understand you, the Military Commander must be able to have his orders carried out, and he can't be bothered with any other agency except something that he can order to do?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. "Bother" is hardly the word to use, because that implies a disregard, a lack of respect on the part of the Military Commander. That is not true.

Q. Well, I didn't mean to imply anything.

A. Well, it was the word that you used.

Q. Well, you shouldn't brook any interference?

A. No, it isn't as strong as brooking any interference. It is adherence to the principle, Mr. Anthony, that where you charge a man with responsibility, you must give him the authority to exercise that responsibility. And if you refer to civil courts offenses which have been characterized as offenses by the Military Commander, you are placing, therefore, in the hands of another agent the enforcement of your regulations. And if he doesn't choose to enforce them the way you feel they should be enforced, your authority, therefore, is diminished and in time even nullified.

Q. Then you think the Western Defense Command was injured by that program in California? Is that the result [295] of that?

A. I don't care to express an opinion on that. I am dealing with the local situation.

Q. But you are dealing with it in such a general phase, General Richardson, it seems fully applicable to any other East or Southern Command, then, is that not a fact?

A. Yes, I do think this, that this Commanding General of the Eastern Defense Command was placed in a very embarrassing position by the ruling of the court in returning to the jurisdiction of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
the First Corps Area the citizen who was ejected,
or alien—I don't know whether it was a citizen or
an alien.

Mr. Anthony: May we have a 5-minute recess,
your Honor?

The Court: Yes. We will have a recess.

(A recess was taken at 10:27 a.m.) |

After Recess

Cross Examination

(continued at 10:40 a.m.)

By Mr. Anthony:

Q. General, is it your military judgment that
the present blackout is necessary for the defense
of these islands?

A. You mean in its modified form?

Q. The existing blackout regulations.

A. Yes.

Q. Do you know what the practice is in the
Gilbert and the Marshalls and Guadalcanal in re-
gard to blackout? A. Yes. [296]

Q. Could you tell us that without divulging any
secrecies?

A. Perhaps I answered a little too categorically.
I could not state with certainty what the conditions
are, but generally speaking there is no blackout.

Q. And the blackout that exists here exists in
places other than military and naval installations,
is that not a fact? A. Here?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Here in Oahu?

A. Yes, the entire city is blacked out after 10 o'clock.

Q. The waterfront? A. No.

Q. Pearl Harbor?

A. No. They are allowed to have their lights because they have to work. It is in the prosecution of the war.

Q. Now, when the fleet pushes farther west, as we are now informed they are doing in Palau, as I understand you the imminent danger of invasion of Hawaii increases? That is your testimony?

A. No, I did not say that. I said that I would not argue the question of the imminent danger of invasion. I say that the danger of an attack on Hawaii is always imminent and impending, and that danger increases when the fleet is here in port. It is much greater when the fleet is in port than when it isn't.

Q. Well, when the fleet is in port, are the restrictions [297] on the blackout and other regulations of civilians increased any?

A. I don't think I should answer that question, Mr. Anthony. I don't think it would do any good to answer that question.

Q. Well, if that is your judgment, we'll accept, the Court will accept that, I think. You prefer not to answer that question?

A. I would prefer not to answer that question. I might modify that by saying—

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. I don't want anything that you feel, as Military Commander in this area, you shouldn't say.

A. We have to be alert.

Q. General, are you familiar with the Biennial Report of the Chief of Staff of the U. S. Army, covering the period of July 1, 1941, to June 30, 1943?

A. I know that the book exists and I have read it, parts of it. I could not say that I was thoroughly familiar with it.

Q. General Marshall tells us in this book that the war is in, as he describes it, five phases. Are you familiar with that part at all?

A. No, but if you will refresh my memory—

Q. Well, I will refresh your memory. The first phase he treats, General Marshall says—and this is in his report [298] to the Secretary of War:

“In my first report, which covered the period July 1, 1939, to June 30, 1941, events were treated in two phases. The first phase included the fall of France.”

Then he goes on to say:

“The second phase commencing with the Battle of Britain and terminating with the German declaration of war against Russia.”

Then he goes to what he calls the third phase, which brought to an abrupt conclusion the Japanese attack of December 7, 1941. The fourth phase, the complete mobilization of the power of the United States, and the fifth phase, which he says we are in now, and this is what he says:

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

"The fifth phase in which we are now engaged involves the launching of Allied military power against our enemies, in a series of constantly increasing offensive blows until they are beaten into complete submission."

"You agree with that analysis of the stage of warfare that we are in at the present time?"

A. Yes, we are engaged now in attacking our enemies.

Q. General Marshall also says:

"Immediately after Dunkirk the British Isles were in effect defenseless insofar as any organized and equipped ground forces were concerned. Practically all their field Army and equipment had been lost, and an immediate invasion was threatened."

Would you say General Marshall uses that expression accurately in that connection, the situation of the British after Dunkirk?"

A. It would be impossible for me to state just what General Marshall had in mind when he made that statement. [299]

Q. Well, presumably he is a soldier like yourself and used to precise military terms, is he not?

A. He is speaking very broadly.

Q. Would it be of any significance to you, as an expert military commander, to know that no place in either the Army's or Navy's description of December 7th attack that incident is referred to as anything other than an attack or an assault?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. I haven't analyzed the reports to that extent.

Q. Well, have you ever seen a military report which has treated the raid of December 7, 1941, other than an assault or a raid, as distinguished from an invasion?

A. It must have been in the mind of Governor Poindexter that it was an invasion when he invoked the provisions of the Hawaiian Organic Act and came down to General Short and turned over to him the powers of the Government.

Q. Well, at that time we were hearing rumors that parachute troops were landing in Manoa Valley, General. Maybe that's what the Governor had in mind.

A. I have no idea what he had in mind.

Q. Have you examined the proclamation of General Short and Emmons?

A. I have.

Q. It's a fact that they referred to that opening of the war as an attempted invasion, isn't that so?

A. There is nothing that I know of in the law that specifies the degree of the invasion or the degree of imminence. [300]

Q. I am just asking you about the fact now. We will talk to the Court about the law. That is a fact, they called it an attempted invasion, both Generals?

A. I would have to refresh my memory.

Q. Well, we have it right here, General.

A. If they said it, it is there; that's all there is to it.

5

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)°

Q. This is a very bad copy, General. (Handing the witness a file of papers.) That's a proclamation of General Short of December 7, 1941. If you can examine that paragraph that I have indicated here—in that proclamation, General Short refers to the many means of attack by the enemy and a possibility of invasion. Do you think that he was using that expression accurately at that time?

A. No, I do not think so.

Q. And that was an accurate description of what was taking place out here on December 7th?

A. If that was General Short's idea, I presume it was accurate.

Q. It was reaffirmed by General Emmons when he took over this command.

A. I am in no position to pass judgment on their judgment at that time, but I presume that it was accurate.

Q. They had complete knowledge of the facts, presumably? A. Presumably.

Q. Being here. At the present time we have definite [301] air superiority in the Central Pacific area, do we not? A. I believe that we have.

Q. And is this report of General Marshal accurate in referring to this theatre: (Showing witness a book)

“Air superiority was demonstrated by a loss ratio of four to one in our favor.”

A. If General Marshal stated that, I am sure that it was based upon accurate intelligence and information.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. Are you able to give us any closer appraisal as to what the air superiority is at the present time? This was dated June 30, 1943. A. I am not.

Q. Have we increased our air superiority over the Japanese since June 30, 1943?

A. Yes. But you must remember that that isn't referring to the whole Pacific area, unless I am mistaken.

Q. Well, I'll read the paragraph, if you'd like to hear it:

"The United Nations in the Pacific Theatre——"

Now, what does the General mean?

A. He refers to everything, including General MacArthur's area.

Q. That's what I thought.

"——now possesses more secure positions from which to counter Japanese offensive ventures. Also, Commanders and troops had secured valuable experience in battle. Unified commando arrangements have welded sea, air and ground forces into efficient fighting teams. Air superiority was demonstrated by a loss ratio of four to one in our favor. And a more complete [302] control of the sea made possible by the skip bombing tactics perfected in the southwest Pacific by General Kenney's airmen."

General Marshal is talking about the entire theatre, is he not, the entire Pacific theatre?

A. It would seem so.

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

Q. General Richardson, getting back to our system of provost courts, is it fair to say that the reason that you do not desire to have military regulations enforceable either in this Court or in Territorial courts is that you do not have confidence in the judges who would administer the regulations?

A. Oh, by no means, by no stretch of the imagination. I would like to make that just as emphatic as possible. My whole position in this matter is that, having responsibility, I must have the authority to enforce my orders. And, inasmuch as the laws of the Territory and the laws of the Federal Government do not characterize as offenses the offenses which in this Territory are considered essential to security, and the violation of which must be punished quickly, then we must have some means, some military tribunal at my disposal to handle those cases in order to enforce my authority. And, as I repeated, and I state again, that if it were possible for me to transfer, to eliminate the provost courts and return that authority to the civil courts, I would be the first to advocate it. I have studied that problem for the last three months. When I first approached it, I thought that I would be able to do it. But after many conferences on the subject, I came [303] to the conclusion that I would be weakening my authority. I am faced here with a reality. I am not faced here with academic questions. And if I sense the feeling of this community correctly, enforced by the senti-

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
ment and feeling of our Nation as a whole, we are in no mood to have another Pearl Harbor.

Q. What do Military Courts have to do with military disaster, General Richardson?

A. It has a ~~great deal~~ to do with its repetition, because it allows the Commander to so enforce his orders as to instill into the offenders a fear of violation thereof.

Q. Well, the raid on Pearl Harbor had nothing to do with the civil population, did it, General Richardson?

A. Not at that particular time. Remember, we were not at war when the raid occurred.

Q. No, but I am just trying to find out how you relate those two things.

A. Let me try and explain it again. I can understand that it is very difficult for a layman to appreciate what responsibility in this area means, but I know that we have here thousands and thousands of American boys in the services who have given up a lot of their civil liberties, too. I have renounced a great many of my civil liberties in donning the uniform. And you must remember that in this area all of these young men, officers and men, and women, too, who are serving in the Armed Forces, they willingly gave up those because down in their hearts they know it is right. Now, it may be against [304] academic questions for a military commander to have a tribunal in a civil community such as this, which is a part of our Territory, to enforce his orders. But we are in a very special

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
position here on the Islands of Hawaii. As I have stated, we are in the combat zone; we are in an active theatre of war; we haven't got a homogenous population, we have a heterogeneous population with all sorts of affinities and loyalties which are alien in many cases to the philosophy of life of the American Government. And these boys out here in the defense area are entitled to security. Our fleet is entitled to security, without any academic questions entering into it at all.

We are faced with reality, and, as the motto of the D.A.R. is, "Eternal Vigilance Is The Price Of Liberty."

I cannot, as a soldier, renounce my duty or what my conscience dictates in order to carry out the mission of the Commander-in-Chief, Admiral Nimitz. And I know this, too, that the people on the mainland feel the same way, that this place shall be secure. And they would never forgive any let-down in regulations or measures to insure their security. And they are out here in this area, these soldiers, and they, too, as I say, have renounced their liberties and they are suffering a great many spiritual wounds, separated as they are from their families, as well as flesh wounds.

And I feel that you are trying to weaken my authority out here, that you are trying to take away from me the measures that will insure the security of these islands by the elimination [305] of these provost courts and the abolition of this partial and

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
very mild form of martial law which in no way interferes with the activity of this community.

Q. All I am trying to do, General Richardson, is to give this boy here the kind of a trial that the Constitution and laws of the United States say he is entitled to; that is all I am trying to do.

A. He has gotten as fair a trial as thousands of soldiers in the Armed Service who appeared before the summary courts, the one-man court. He committed a military offense. He didn't commit a civil offense. And therefore he goes before a military tribunal.

Q. You make no distinction between your Governmental or political mission and the military mission? It is all one, so far as you are concerned?

A. My mission is not political. My mission—

Q. I mean political in the highest sense, Governmental.

A. Well, if you want to put it in the intellectual sense, there is a certain affinity.

Q. Yes. You make no distinction? A. / No.

Mr. Anthony: I think that is all.

Redirect Examination

By Mr. Ennis:

Q. General Richardson, Franklin D. Roosevelt, in his [306] Alien Enemy Proclamation of December 8th, giving authority to deal with aliens of Japanese ancestry, stated:

“As President of the United States, and as Commander-in-Chief of the Army and Navy of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.) ,
the United States, I do hereby make public
proclamation to all whom it may concern, that
invasion has been perpetrated upon the terri-
tory of the United States by the Empire of
Japan."

From the military point of view, do you agree with
that statement? A. Yes, I do.

Q. General Richardson, you referred to certain
litigation on the east coast of the United States.
Do you know whether that area was an active
theatre of war?

A. At that time it was classified as a theatre
of operations.

Q. Not an active theatre of war? A. No.

Q. Of course, the population—

A. It was a potential theatre of war.

Q. It does not contain the Japanese population
that you have here. Now, General Richardson,
based upon your study of the matter, and having
in mind your military responsibility for the mili-
tary security of this Territory, is it your opinion
that the public safety requires the modified form
of martial rule which exists here, and in particular
provost courts for the military offenses which were
declared in your General Orders, and in particular
again the offense of an attack on a sentry, [307]
which is here involved.

A. Ever since my incumbency as Military Gov-
ernor, I have given the most careful study to the
possibility of eliminating this modified form of

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)
martial law and the provost courts. I did that for a number of reasons. First, I wanted to carry out, if I could, the directive of the President, which expressed the thought and idea when he approved the proclamation that gradually there would be a return to civilian control of the civilian functions. Secondly, I wanted to do it, if I could, for the reason that I have many other duties besides looking after some of the civilian population. And also because fundamentally I believe that it is right, that it should be, if possible, in the hands of the civilians.

I am an American. I think I understand American tradition, American law. And I would be the first to get up and say, the time has now come to renounce this form of modified martial law, if I conscientiously could do it. But I do not feel that I can conscientiously do it and carry out my mission, which has been assigned to me for the security of these islands. I feel that I must have that control that is necessary to insure the safety and security of Hawaii, which involves the safety and security of the fleet, upon which the fate of this Nation depends.

Q. One last point I'd like to clear up, General. Despite the increase in the United States fleet, and any increased protection we may have here against an attack by the Japanese, [308] is it your testimony that carrier-borne Japanese planes could get over these islands despite all protective measures we might take?

(Testimony of Lt. Gen. Robert C. Richardson, Jr.)

A. Absolutely. We have taken the utmost precautions for their detection, but they are not infallible and they have very definite limitations. Witness, for example, the marvelous protection that Germany has. Yet, despite that, the English and the Americans penetrate into German territory, and vice versa, the Germans into England. It seems to me, if I may add, that the primary consideration in viewing any of these matters is the prosecution of the war without interruption to a successful termination. And that every act of the Military Commander should be viewed whether it forwards that object or is hindering its accomplishment. I say, and give it as my judgment, that if we remove from the authority of the Military Commander the power which is given to him under this modified form of martial law, we hinder the successful accomplishment of the war.

Mr. Ennis: That's all of redirect. Any further recross?

Mr. Anthony: No. That is all.

Mr. Ennis: Thank you.

(Witness excused.)

Mr. Ennis: Admiral Nimitz, will you take the witness stand, please? [309]

ADMIRAL CHESTER W. NIMITZ,

U. S. Navy, a witness in behalf of the Respondent,
being duly sworn, testified as follows:

Direct Examination

By Mr. Ennis:

Q. Admiral Nimitz, will you state your full name and your present official position?

A. Chester W. Nimitz, Commander-in-Chief Pacific fleet and Pacific Ocean areas.

Q. Now, Admiral Nimitz, your affidavit annexed to the return and answer in this case, sworn to on March 24, 1944—I will just state this to shorten up the qualifications—states that you were graduated in the Naval Academy in 1905 and have been in the U. S. Navy since, occupying different positions both at sea and in the Navy Department.

A. That is correct.

Mr. Ennis: Do you admit the qualifications as they appear in the affidavit?

Mr. Anthony: Yes, we admit that.

Mr. Ennis: We'll admit that, then. Admiral, will you state in a general way, then, what your duties as Commander-in-Chief of the Pacific area are?

A. To prosecute the war in the Pacific Ocean areas in accordance with general directives from the Joint Chiefs of Staff. [310]

Q. And in the discharge of those duties, have you made yourself familiar with enemy actions in the Central Pacific area?

A. To the best of my ability, yes.

(Testimony of Admiral Chester W. Nimitz.)

Q. Will you state, Admiral Nimitz, in a general way the strategic position of this Territory as part of your general command?

A. The Hawaiian area constitutes the only base for the Navy that we have in the Pacific Ocean at the present time. It has the greatest importance to the fleet and to the Army for operations to the westward. Anything that is injurious to this area is prejudicial to our conduct of the war.

Q. Do you believe, Admiral Nimitz, as a military matter or as a naval matter, that the Japanese enemy might or could attack these islands?

A. Yes, they could. It is still within their capability to make carrier attacks behind the front, in spite of the daily searches that we make. We have never ceased, since December 7th, to search the areas from which we think those attacks are likely to come. Until the last Japanese carrier is destroyed, that capability will exist.

Q. Admiral Nimitz, will you turn and examine the map which is on the easel here in Court. Was this map of the Pacific Ocean prepared in your headquarters? A. Yes, it was.

Q. Will you state from the map and from the legend which [311] you hold in your hand, which describes the meaning of the red and blue circles around the islands, the method in which an attack by the Japanese forces might occur?

A. First of all, I will describe the area which it is possible for us to cover by search; from areas

(Testimony of Admiral Chester W. Nimitz.)

which we control, this line here. (Indicating on map)

Q. The outer blue line?

A. The outer blue line gives the area which we can cover by aircraft search from bases in the continent of the United States and in the Aleutians. This inner blue line around the Hawaiian chain that goes up as far as Midway is the area in which it is possible for us to cover by search from bases in the Hawaiian chain.

Q. That is air search?

A. Air search. This wide red line here represents the area or the line of position from which Japanese aircraft can launch an attack on objectives. This one here on Midway, this one, French Frigate Shoals, and from here on the Hawaiian area—

Q. That's the red line around all of the Hawaiian Islands?

A. The red line around all of the Hawaiian Islands. These small circles around Midway, around French Frigate Shoals, and around the chain from Kauai to Hawaii represent the line from which submarines can launch planes to attack or reconnoiter the Hawaiian Islands. These lines here with arrows indicate [312] the directions from which carrier attacks may approach the islands.

Q. And those lines run between to some extent the areas of search by plane?

A. Yes. If the Japanese wish to recover their aircraft, they must come within this inner red line here. If they are willing to make an all-out attack

(Testimony of Admiral Chester W. Nimitz.)

and not attempt to recover their aircraft, they can attack from the line out here.

Q: That faint outer red line? A: Yes.

Q: And this map and this legend were prepared at your headquarters?

A: Prepared in my headquarters.

Mr. Ennis: I offer the map and the legend explaining the circles in evidence. Any objection?

Mr. Anthony: No objection.

The Court: Received in evidence as Exhibit 12.

(Respondent's Exhibit 12 was received in evidence.)

[Respondent's Exhibit No. 12 is set out in full as Respondent's Exhibit No. 9, at page 538-a of this printed record.]

By Mr. Emmons:

Q: Admiral Nimitz, in addition to the possibility of an attack by carrier-based planes, are there other military factors, major factors to be considered in determining the possibility of an attack by the Japanese on this Territory?

A: Yes. The Japanese can land commando raiders, espionage parties, in spite of any reasonable preventive efforts that we make. And the information that they might [313] possibly obtain would be, in my opinion, could be more injurious to our cause than if they came to these islands and established a beachhead on one of them. The information that they might obtain as to prospective movements of our fleet, the presence of our fleet in these waters, or its absence, the deductions that might be made from the information they pick up

(Testimony of Admiral Chester W. Nimitz.)

mingling with the Japanese of the community might very well cause some of our operations in the far west, far westward of here, to be unsuccessful.

Q. Well, in other words, do you agree with General Richardson's testimony that protection of these Naval operations to the westward from premature disclosure is a vital factor in your operations?

A. It is of the utmost importance, and the security against espionage activity in these islands is of the utmost importance.

Q. Admiral Nimitz, having in mind your duties here and your responsibility, and from your study of the situation, would you state whether or not, in your opinion, there is imminent danger of invasion of the Territory of Hawaii by the Japanese?

A. Invasion by sea-borne troops in sufficient numbers to seize a bridgehead, no. I consider it neither imminent nor probable. But invasion by stealth, by submarine, commando raids, espionage parties, I consider it not only probable but imminent. It is constantly impending. [314]

Q. And what is your view on invasion by carrier-borne aircraft?

A. I cited that in a previous answer, that it is possible, if the Japanese wish to take the risk; they have sufficient carriers and sufficient planes to make an attack on these islands similar to the one that they made on December 7th.

Mr. Ennis: You may cross examine.

Mr. Anthony: No questions.

Mr. Ennis: That is all, Admiral Nimitz.

(Witness excused.)

Mr. Ennis: May I have a recess to confer with Counsel, your Honor?

The Court: Yes. We will take a recess.

(A recess was taken at 11:17 a. m.) [315]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu, T.H., do hereby certify as follows:

That I am the Official Court Reporter of the above-named court;

That the foregoing are true and correct copies of testimony taken by me and transcribed by me in Habeas Corpus No. 298, In the matter of the application of Lloyd C. Duncan for a Writ of Habeas Corpus, held in the above-named court, before the Hon. Delbert E. Metzger, as follows:

April 5, 1944 Hon. Harry Steiner

April 5, 1944 Hon. Albert M. Cristy

April 6, 1944 Gustaf K. Sproat

April 7, 1944 Hon. Ingram M. Stainback

April 7, 1944 Capt. J. Frank Wickhem

April 8, 1944 Capt. J. Frank Wickhem

April 8, 1944 Robert K. Murakami

April 11, 1944 Robert K. Murakami

April 11, 1944 Lt. Gen. Robert C. Richardson, Jr.

April 11, 1944 Admiral Chester W. Nimitz

May 8, 1944

ALBERT GRAIN,

Official Court Reporter. [316]

[Title of District Court and Cause.]

EXCERPT

From the above-entitled matter held in the U. S.
District Court, Honolulu, T. H., on April 21,
1944,

Before

Hon. J. Frank McLaughlin Judge.

The Court: I will make a ruling at this time which will dispose of this case, and will later file a written opinion.

I am satisfied from my knowledge of the evidence which is in this case, limited though that knowledge is at the moment due to the fact that I haven't had time to digest all of the exhibits any more than Counsel have, but from what you have informed me of it, and from my knowledge of certain portions of it—having read certain portions of the Duncan case—and from your arguments I am satisfied that it is not necessary in this case for this Court to decide the question as to whether or not in August, 1942, the existence in this Territory of martial law was or was not valid. [317]

It seems to me that there is only one issue in this case, that can be disposed of with ease. That issue is: Did the Provost Court of Honolulu in August, 1942, have jurisdiction over the subject matter and over the person in the White case? As was remarked by District Judge Wyche, of the District Court of Virginia, Eastern District, in the case of McCune vs. Kilpatrick, decided December 28, 1943, found in 53 Federal Supplement, 63:

"A civilian is presumed not to be a person subject to military law, and the party asserting military jurisdiction over him has the burden of proving such jurisdiction, and must point to a valid Federal statute which confers it."

Some portions of that quotation may not be strictly applicable to this case, but it is absolutely true that under the laws of the United States of America the military claiming jurisdiction over a civilian must be able in point of law to justify that jurisdiction. Here justification appears to be a declaration on December 7, 1941, by the Governor of the Territory. And, so far as by that declaration he declared martial law to be in existence, this Court is of the opinion that he had, as of that day and date, ample justification in placing the Territory under martial law.

But, in going further, as he did in the fourth from the last paragraph of that proclamation, and saying in these words,

"And I do further authorize and request the said Commanding General, Hawaiian Department, and those subordinate military personnel to whom he may delegate such authority during the present emergency and until the danger of invasion is removed, to exercise the powers normally exercised by judicial officers and employees of this Territory, and of the counties and cities therein, such other and further powers as the emergency may require,"

[318] that the Governor of the Territory was then

acting beyond the scope of the powers conferred upon him by the Congress of the United States, and said abdication of his powers as Governor and purported delegation of powers that he did not have is absolutely and wholly invalid; consequently founding its authority to try the White case upon that invalid delegation of authority from the Governor of the Territory, and purporting thereunder to do what the Governor himself could not do, it is the judgment of this Court that in the White case the Provost Court of Honolulu had no jurisdiction over the subject matter involved in the White case, nor over the person of Mr. White, and in purporting to exercise jurisdiction over both the subject matter and the person that that Court deprived Mr. White of his Constitutional rights as a citizen of the United States of America.


Accordingly, though this opinion will be amplified by a written opinion later to be filed, it is now the judgment of this Court that the writ heretofore issued in this case be made permanent and the defendant discharged.

Mr. Ennis: May I have an exception to the decision making the writ permanent, your Honor?

The Court: You may.

Mr. Ennis: As I take it, since there is going to be an opinion, it will not be necessary at this time under Rule 124 to note an appeal in open court.

The Court: Well, your guess as to that is as good as mine, [319] and I would advise you to note it out of an abundance of caution.



Mr. Ennis: Well, pursuant to Rule 124 of this Court, I note an appeal to your Honor's decision.

The Court: Very well.

Mr. Ennis: And, in view of the fact that there will be an opinion later, may I request your Honor at this time a 90-day period allowed under the rules of civil procedure to perfect the appeal?

The Court: You may have that.

Mr. Ennis: Thank you, your Honor.

~~The Court: The Court will stand adjourned.~~

[320]

I, Albert Grain, Court Reporter, U. S. District Court, Honolulu T. H., do hereby certify as follows:

That I am the official Court Reporter of the above-named U. S. District Court;

That the foregoing is a true and correct excerpt from the proceedings taken by me and transcribed from my stenographic notes in Habeas Corpus No. 300, in the matter of the application of Harry E. White for a writ of habeas corpus, held in the above-named Court on April 21, 1944, before the Hon. J. Frank McLaughlin, Judge.

May 8, 1944.

ALBERT GRAIN [321]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD
ON APPEAL

United States of America,

Territory of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the Territory of Hawaii, do hereby certify the foregoing pages numbered from 1 to 321, inclusive, to be a true and complete transcript of the record and proceedings had in said court in the above entitled cause as the same remain of record and on file in my office; and I further certify that I am including with said record the following exhibits:

Petitioner's Exhibit "A" to "Q", inclusive,

Respondent's Exhibits Nos. 1 to 16, inclusive.

that the costs of the foregoing Transcript of record on appeal are \$50.45 and that said amount has been charged by me against the United States. [322]

In Testimony Whereof, I have hereto set my hand and affixed the seal of said Court this 9th day of May, A. D. 1944.

[Seal]

WM. F. THOMPSON, JR.,

Clerk, U. S. District Court,
Territory of Hawaii.

[Endorsed]: Filed May 12 1944. [323]

PETITIONER'S EXHIBIT "A"

Library of Hawaii

ARMY AND NAVY REGISTER

ADMIRAL HALSEY'S VIEWS

Admiral Wm. F. Halsey, jr., home on leave from the South Pacific, at the home of his daughter, Mrs. Preston L. Spruance, in Delaware, stated his opinion that the way to win the war was beat Hitler and then get the "stuff" out to the Pacific so we can polish off the Japs. He is quoted as saying:

"While the Japs seem to have enough equipment, the Jap air force has definitely deteriorated—some of their flyers are mere kids, lacking air training and air experience. We have captured some of their 18-year-old pilots. We outclass the Japs in planes and personnel.

"Air power alone is not enough. It takes a fighting man on the ground to help win the fight. You can't win with ships and planes alone nor with ground troops alone. It's the combination.

"Island hopping is not the best way to win, of which all fighting men are convinced. In a small way we have gone around some of the islands. This has worked out well."

As to unified command, Admiral Halsey said, "Everybody has an area for which he is responsible. My directions come from Gen. MacArthur, and our relations are most cordial. I see him about once every two months, and I never received finer treatment from any man."

With regard to "where is the Jap fleet?" the admiral said that, while units of it "are all over the Pacific," it is concentrated to a certain extent at Truk in the Carolinas and off the mainland of Japan, and added:

"If it came to a show-down fight between their fleet and ours, the American fleet would be afloat and theirs at the bottom of the sea, where all Jap ships should be.

"When you begin to lick a Jap and lick him properly, he may then begin to doubt he is the son of the Sun God. When he is well fed and well uniformed he is tough, like any other rat. But when they are hungry and can't get food they are easy to beat—like other rats."

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "A-1"

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 41

(For release at
1700 (HWT), Thursday,
30 March 1944)

Strong Pacific Fleet Forces, at dawn Wednesday, 29 March, (West Longitude Date), initiated heavy attacks on the Japanese-held Palau Islands. After discovery of approach of our forces by enemy planes searching from their bases in the Carolines and New Guinea, their ships were observed fleeing the area before our units could reach attack positions. Our attacks continue. No further details are as yet available.

C. W. NIMITZ,
Admiral, U. S. Navy,
Commander in Chief, U.S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

Background Information for the Press

Palau Islands are a group of 200 small, heavily wooded, volcanic islands at the Western end of the Caroline chain. Babelthuap Island, the largest in the Palau group, is 142 square miles in area, the second largest land mass in the Carolines and exceeded in size only by Ponape.

The town of Koror, just south of Babelthuap Island is the seat of Japanese administration of the 1500 Caroline Islands which, for administrative purposes, are divided into four districts—Palau, Yap, Truk and Ponape.

The Spanish explorer Magellan came into the South Pacific in 1521, stopping at Guam and the Philippines, but the Palau group was not discovered until 1712 when a band of Spanish missionaries landed on one of the islands. The group was "re-discovered" in 1783 by an Englishman, Capt. Wilson, whose ship the Antelope belonged to the East India Company.

Spain held loose control over the Palau Islands until 1898 when, at the end of the Spanish-American war, Spain sold the Carolines and the Marshalls to Germany. In 1914, however, when Japan joined the Allies to fight Germany, Japan moved in and took over. At the end of the first World War, she was given a Class "C" mandate over the islands.

The natives of the Palau group are Micronesians who are smaller and darker than Polynesians. In 1937 there were 6587 natives, 9530 Japanese and 18 foreigners registered in the Palau Islands. Before

Petitioner's Exhibit A-1—(Continued)

the war there were two Christian schools in Palau.

Palau Islands lie within one of the rainiest areas of the Pacific, the average total rainfall being some 180 inches per year. Destructive typhoons often hit these islands, flattening houses and uprooting trees. Many installations in the Palau group were destroyed by a great typhoon in 1927.

—2—Palau Background Material

Pigs, cows and chickens were imported by the Spaniards and are raised for food. Taro, sweet potatoes, rice, bananas and papayas round out the native diet. There are no poisonous snakes and the islands are free from the malaria-carrying mosquito.

The principal crop is coconuts and much copra is exported each year. Fishing is also important and tunny-fish and bonita are dried and shipped to Japan for food. Many tortoise shell objects are made by the natives.

The Palau islands are well-known as the home of the Mikimoto culture pearls. Grains of sand are inserted within the shells of young oysters and at the end of nine years, the oysters are opened and the full-grown pearls removed. Before the war, Mikimoto culture pearls were sold in the finest shops of New York, Paris and London.

The island of Anguar, lying to the south, is one of the most important islands commercially. Eight square miles in area, it is one huge phosphate mine whose contents are shipped to Japan for fertilizer and munitions-making. In 1934 some 60,000 tons were shipped to Japan and it is estimated that

Petitioner's Exhibit A-1—(Continued)

2,400,000 tons comprise the deposit. In pre-war days, Japan obtained one-fifth of her entire consumption from this island.

In the Palau group, as well as the Caroline and Mariana Islands are traces of earthworks, walls and canals which were apparently built by ancient people of superior intelligence and organizing ability. The secret of these ruins has never been solved.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 40

(For Release at 1200 (HWT),
Wednesday, 23 February 1944)

1. The conquest of Eniwetok Atoll was completed on the evening of 22 February (West Longitude Date) with the capture of Parry Island.

The enemy garrison which defended the atoll is estimated at 3,000.

2. A strong Pacific Fleet task force, including several hundred carrier-based aircraft, struck Saipan and Tinian Islands in the Mariana group, on 22 February (West Longitude Date). Further details are not now available.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 39

(For release at 1730 (HWT),
Monday, 21 February 1944).

Our forces have captured Eniwetok Island. Enemy resistance has been stubborn, and small pockets of troops are yet to be overcome.

Parry Island is being heavily attacked by our air and surface forces.

Preliminary reports indicate that our overall casualties in the capture of the Eniwetok Atoll as of last night are approximately 150 dead and 350 wounded.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 38

(For release at 1930 (HWT),
Sunday, 20 February 1944).

Our forces have landed on Eniwetok Island and now have possession of the western half of the island. The attack is being carried out by elements

Petitioner's Exhibit A-1—(Continued)
of the 106th Infantry supplemented by a unit of the
22nd Marines.

Except for Parry Island, the remainder of the
atoll is in our hands.

Casualties continue to be light.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 37

(For release at 1200 (HWT),
Sunday, 20 February 1944).

The Pacific Fleet has returned at Truk the visit
made by the Japanese Fleet at Pearl Harbor on 7
December 1941, and effected a partial settlement of
the debt. The initial approach was undetected.

During attacks on 16 and 17 February (West
Longitude Date) our carrier planes destroyed at
least 201 enemy aircraft, 127 of which were shot
down in combat. More than fifty additional enemy
aircraft were damaged on the ground. There was
no enemy air opposition on the second day of the
attack.

Enemy surface ships sunk included two light
cruisers, three destroyers, one ammunition ship, one

Petitioner's Exhibit A-1—(Continued)

seaplane tender, two oilers, two gunboats, and eight cargo ships. Additional enemy ships probably sunk included one cruiser or large destroyer, two oilers, and four cargo ships.

Shore facilities on the principal islands, including airdrome runways and installations, were thoroughly bombed and strafed.

Our losses were 17 planes. None of our ships was lost, but one sustained moderate damage.

Admiral R. A. Spruance, U. S. Navy, was in overall command of the operation, and Rear Admiral Marc A. Mitscher, U. S. Navy, former Commanding Officer of the Hornet, directed the carrier air attack.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 36

(For Release at 1300 (HWT),
Saturday, 19 February 1944)

Our forces have captured the enemy air base at Engebi and several other islands in the northern portion of the Eniwetok Atoll. Preliminary reports indicate our casualties have been light.

Petitioner's Exhibit A-1—(Continued)

Assaults on other portions of the atoll are proceeding according to schedule.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 35

(For release at
1230 (HWT)).

The capture of Eniwetok Atoll has been undertaken by forces of the Pacific Ocean Areas. Army and Marine assault troops have landed and established beachheads.

The initial landings took place after strong preliminary attacks by carrier-based aircraft and by heavy ships of the Pacific Fleet. The troops went ashore under the cover of battleship gunfire and with the close support of low flying naval aircraft.

All forces participating are under the immediate command of Rear Admiral R. K. Turner. The amphibious forces are commanded by Rear Admiral H. W. Hill. The assault troops comprising the Twenty-second Marines and elements of the

Petitioner's Exhibit A-1—(Continued)

106th Army Infantry are commanded by Brigadier Gen. T. E. Watson, USMC.

C. W. NIMITZ,

Admiral U. S. Pacific Fleet,
and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 34

(For Release at 1100 (HWT),
Thursday, 17 February 1944)

At daylight yesterday morning, 16 February (West Longitude Date), powerful naval task forces of the U. S. Pacific Fleet commenced an attack on the Japanese Naval Base at Truk with several hundred of our planes participating. No further details available.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 32

(For Release at 1230 (HWT),
Sunday, 6 February 1944)

Occupation of the Kwajalein Atoll is nearly complete.

Gugegwe, Bigej, and Eller Islands have been captured after moderate resistance, and several additional undefended islands occupied.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 33

(For Release at 1230 (HWT),
Tuesday, 8 February 1944)

Organized resistance on Kwajalein Atoll has ceased, and its capture and occupation have been completed.

C. W. NIMITZ,

Admiral, U. S. Navy,
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 29

For release at 1130 (HWT),
Thursday, 3 February 1944).

Our forces have captured Namur and several adjacent islands.

Resistance continues on Kwajalein Island, but we have landed troops and mechanized equipment in force and are proceeding with the annihilation of the enemy.

C. W. NIMITZ,

Admiral, U. S. Navy
Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 30

(For release at 1730 (HWT),
Friday, 4 February 1944).

Operations at the Kwajalein Atoll continue satisfactorily.

Our forces have landed on Ebeye, north of Kwajalein Island. The landing was unopposed but resistance was encountered a short distance inland.

Petitioner's Exhibit A-1—(Continued)

from the beach. We have now occupied half the island.

Two small islands between Kwajalein and Ebeye have been occupied following neutralization of moderate opposition. Gugegwe and Loi Islands, north of Ebeye have been taken under attack by bombing and Naval gunfire, and the enemy is answering our fire.

Resistance on Kwajalein Island continues, but progress is being made. Our casualties continue to be moderate.

C. W. NIMITZ,

Admiral, U. S. Navy,

Commander in Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 27

(For Release at 1000 (HWT),
Tuesday, 1 February 1944)

Powerful forces of all types, commanded by Vice Admiral R. A. Spruance, U. S. Navy, have begun operations the objective of which is the capture of the Marshall Islands.

Following intensive preparatory bombardment of enemy installations by carrier-based aircraft and by battleships and light surface units, Army and Ma-

Petitioner's Exhibit A-1—(Continued)

rine assault forces have initially established beachheads on islands in the vicinity of Roi and Kwajalein Islands, in the Kwajalein Atoll. Installations on Wotje and Maloelap Atolls were heavily-bombarded by carrier aircraft and by surface forces.

All amphibious operations are commanded by Rear Admiral R. K. Turner, U. S. Navy. The assault troops are directed by Major General H. M. Smith, U.S.M.C. The landing attacks in the Roi Island area are being made by troops of the Fourth Marine Division, commanded by Major General Harry Schmidt, U.S.M.C. The landings are being effected in the Kwajalein Island area by troops of the Seventh Infantry Division, commanded by Major General Charles H. Corlett, U. S. Army.

Strong opposition is being encountered in both assault areas. Initial information indicates that our casualties are moderate.

Supporting air attacks are being made at Kwajalein, Maloelap, Wotje, Mille, Jaluit, Eniwetok and Wake by carrier task forces commanded by Rear Admiral M. H. Mitscher, U. S. Navy, by units of the Seventh Army Air Force, commanded by Major General Willis H. Hale, U. S. Army, and by units of Fleet Air Wing TWO commanded by Rear Admiral John D. Price, U. S. Navy. All shore based aircraft in the Gilberts are operating under the direction of Commander Aircraft, Central Pa-

Petitioner's Exhibit A-1—(Continued)

cific Force, Rear Admiral John H. Hoover, U. S. Navy.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 26

(For release at 1900 (HWT), Sunday,
30 January 1944).

Our carrier task forces today continued their at-
tacks on Kwajalein, Roi, Maloelap and Wotje.

During the day surface forces bombarded the
same objectives while carriers extended their opera-
tions to include bombing of Eniwetok.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 31

(For Release at 1100 (HWT)
Saturday, 5 February 1944)

Kwajalein, Ebeye, and Loi Islands have been captured by our forces.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 28

(For release at 1100 (HWT),
Wednesday, 2 February 1944).

Our forces have captured Roi Island.

Landings have been made on Kwajalein and Namur Islands and the action is progressing favorably. On Namur the enemy has been contained in the extreme northern portion of the island, and at Kwajalein our troops are firmly established and are pushing the enemy back.

Continuous bombardments of beaches by our warships, planes, and landbased artillery enabled

Petitioner's Exhibit A-1—(Continued)

our forces to make landings on the three principal objectives with little resistance.

We have suffered no Naval losses and casualties are very moderate. It is now apparent that the attack took the enemy completely by surprise.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, U. S. Pa-
cific Fleet and Pacific Ocean
Areas

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 24

(For Release at 1330 (HWT),
Thursday, 9 December 1943)

Strong forces of the Pacific Fleet attacked Nauru Island with carrier aircraft and ship bombardment on 8 December (West Longitude Date). Further details are not now available.

Liberators of the 7th AAF which raided the Taroa airdrome installations on the morning of 7 December were intercepted over Maloelap by eight enemy fighters. One fighter was shot down. Our

Petitioner's Exhibit A-1—(Continued)
planes suffered only slight damage. A Liberator of this force also bombed Mille during the same sortie.

C. W. NIMITZ, •

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 25

(For release at 1600 (HWT),
Saturday, 29 January 1944).

Pacific Fleet carrier task forces have made attacks on Marshall Island bases today, including Taroa, Wotje, and Kwajalein.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 20

(For release at 1130 (HWT),
Wednesday, 24 November 1943).

Betio island, Tarawa atoll, was captured shortly after noon 23 November, (West longitude date), following a desperate enemy counter-attack which was crushed by troops of the Second Marine Division. Remnants of the enemy are being hunted down on Apamama, Tarawa and Makin atolls. Seventh AAF Liberators continued diversionary attacks in the Marshalls.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 23

(For Release at 1030 (HWT),
Wednesday, 8 December 1943)

Our carrier task forces which attacked enemy installations on Kwajalein and Wotje atolls on 4 December (West Longitude Date) destroyed 72 planes in the air, strafed and burned an undetermined number of medium bombers on the ground; and destroyed or damaged various ground installations on Kwajalein, Ebeye, Roi and Wotje islands.

At Kwajalein they sank two light cruisers, one

Petitioner's Exhibit A-1—(Continued)

oiler and three cargo transports, and damaged one troop transport and two cargo transports. At Wotje, one cargo transport was damaged.

Our forces, under command of Rear Admiral Charles A. Pownall, successfully fought off vigorous, prolonged aerial and torpedo and bombing attacks. Of one group of seven torpedo planes, six were destroyed by anti-aircraft fire.

One of our ships suffered minor damage. Our aircraft losses were light.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 22

(For release at 00 (HWT),
Monday December 1943).

Strong carrier task forces attacked the Marshall Islands on 4 December (West longitude date). Due to the necessity for radio silence details are not yet available.

C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U. S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 18

(For Release at 1330 (HWT),
Monday, 22 November 1943)

Our troops have improved their positions on Tarawa and Makin atolls, but are still encountering considerable enemy ground resistance. We have landed on Apamama atoll. Liberators heavily bombed the airdrome area at Nauru Island on 20 November (West Longitude Date) and on 21 November Army Liberators continued diversionary attacks, in the Marshalls.

The central Pacific operations are being directed by Vice Admiral Raymond A. Spruance, U. S. Navy. The amphibious forces are under command of Rear Admiral Richmond K. Turner, U. S. Navy.

Landings were made on Tarawa by the Second Marine Division in command of Major General Julian C. Smith, USMC; those on Makin by troops of the 27th Infantry Division, commanded by Major General Ralph Smith, USA. Major General Holland McT. Smith, USMC, is in command of the landing forces.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 19

(For release at 11:30 (HWT),
Tuesday, 23 November 1943).

Our forces have captured Makin. On Tarawa, the Marines have consolidated their positions and are making good progress against enemy concentrations on eastern end of Betio island, with capture assured. The situation on Apamama is well in hand.

Raids are being continued against the Marshalls by carrier aircraft and Army Seventh Air Force Liberators.

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United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 8.

21 August 1942.

Since the initial successful landings in the Solomon Islands by U.S. Forces under the command of Vice Admiral Ghormley, a period of mopping up in order to consolidate our positions has been in progress. Japanese defenders took to the hills and jungle to escape from our forces. There have been daily skirmishes between U.S. Marine patrols and enemy detachments. In these actions both sides have suffered casualties.

Petitioner's Exhibit A-1—(Continued)

On August 19th the Marines with a loss of 6 killed and 13 wounded wiped out a Japanese detachment of 92 officers and men. Enemy resistance continued until the last man was killed.

On the night of August 20th the enemy landed a force of about 700 well equipped troops from high-speed boats outside of the Marines' lines, and attempted to break through. During darkness only hand to hand fighting was possible but with the breaking of day the Marines were able to maneuver. While one battalion held the front line another battalion moved to a flank and drove the then withdrawing Japanese to the beach. Action continued until late afternoon. Of the 700 Japanese, 670 are dead, the rest prisoners. Marine losses were 28 killed and 72 wounded.

The Marines in the Solomons, who are under the command of Major General Alexander A. Vandegrift, U. S. Marine Corps, have added another page to their history of outstanding achievement.

/s/ C. W. NIMITZ,

Commander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 17

(For Release at
1100 (HWT), Sunday,
21 November 1943).

Army and Marine Corps forces, covered by powerful units of all types of the Pacific Fleet, have established beach heads on Makin and Tarawa atolls, Gilbert Islands; meeting moderate resistance at Makin and strong resistance at Tarawa. Fighting continues. During these operations Army Liberators made diversionary attacks in the Marshalls.

C. W. NIMITZ,

Admiral U.S. Pacific Fleet,
and Pacific Ocean Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 16

(For release at
1200 (HWT), Wednesday,
17 November 1943.)

Late afternoon raids were made on enemy positions on Jaluit and Mille atolls, in the Marshall Islands and on Makin Island, in the Gilberts, on 15 November, West Longitude date, by Liberator bombers of the Army's Seventh Air Force.

Petitioner's Exhibit A-1—(Continued)

At Jaluit, many fires were started by our bombs in the hangars, shops and dump areas at the sea-plane bases on Imieji and Jabor Islands. Of the five ships anchored in the lagoon; one was left burning, three others were possibly damaged.

Several fires resulted from the Mille attack, but cloud conditions prevented accurate observance of damage at Makin.

No air interception was encountered in any instance. Anti-aircraft fire was intense at Mille, weak at Makin and at Jaluit. No damage was suffered by our planes or personnel.

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United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 15

(For Release at 2330 (GCT),
10 October 1943)

Supplementing Pacific Ocean Areas Communique No. 14, the following information is available concerning our operations against Wake Island:

The initial heavy and protracted attack made by carrier aircraft and ship bombardment, beginning at dawn on 5 October, West Longitude Date, was followed late the same afternoon by an attack by a group of Navy Liberator bombers led by Commander John T. Hayward, U. S. Navy, and on the morning of 6 October by a further carrier aircraft

Petitioner's Exhibit A-1—(Continued)

bombing by the force commanded by Rear Admiral Alfred E. Montgomery, U. S. Navy.

In the extended attacks our planes dropped 320 tons of bombs. An intensive bombardment by the ships combined to inflict considerable damage to enemy installations on Wake, Peale and Wilkes Islands. Enemy defenses were so neutralized in the initial bombardment that the heavy bombers encountered only weak and ineffective anti-aircraft fire and no air opposition in their low altitude bombing attack in the late afternoon of 5 October.

Our forces destroyed 30 or more enemy planes in the air and 31 on the ground. Many fires were started in the plane dispersal areas, shops, barracks, and storage areas throughout the three Islands. Two small vessels, one loaded with gasoline, were destroyed.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 15 (Continued)

Damage by enemy action to our ships and ship's personnel was negligible. We lost 13 planes in combat.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief Pacific
Fleet and Pacific Ocean
Areas

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 14

For Release after
1200 (HWT) 6 October 1943.

A strong Pacific Fleet task force, commanded by Rear Admiral Alfred E. Montgomery, U S N, heavily attacked enemy held positions on Wake Island with carrier aircraft and ship bombardment commencing at dawn on 5 October 1943, West Longitude Date. Further details are not now available.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 13

22 September 1943

Supplementing Pacific Ocean Areas Communique No. 12, the following information concerning our operations against enemy installations in the Gilbert Islands region during the night preceding and throughout the day of 19 September, East Longitude Date, is available:

Petitioner's Exhibit A-1—(Continued)

Attacks were made by carrier-based aircraft and by land-based Army and Navy aircraft from various bases in the Central and South Pacific areas.

More than 200 sorties were carried out by our planes against Tarawa, Makin and Apamama Islands, in the Northern Gilberts, and Nauru Island, west of the Gilbert group.

Damage to the enemy included: At Tarawa: Air-drome facilities heavily damaged, eight bombers destroyed on the runway, one small vessel sunk; at Makin; airbase damaged, three four-engine sea-planes and one other patrol plane destroyed; at Apamama: Enemy camp installations heavily hit; at Nauru: Damage to installations.

In addition to destroying aircraft on the ground, our forces shot down six Zeros, probably destroyed four others and damaged eight more fighters, and shot down two medium bombers.

Despite attempted interception by day and night fighters and intense anti-aircraft fire encountered, our losses totalled only four planes.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 12

For Release after 2200 (HWT)

18 September, 1943.

Strong Pacific Ocean Area forces today conducted heavy raids on the Japanese bases at Tarawa Island, in the northern Gilbert group, and on Nauru Island, west of the Gilbert group.

These operations were carried out according to plan during the night preceding and for a good portion of the day of 19 September, East Longitude Time.

Details of the operations are not immediately available.

/s/ C. W. NIMITZ,

Admiral, U.S. Navy, Commander in Chief, Pacific Fleet and Pacific Ocean Areas.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 11

8 September, 1943.

A task force commanded by Rear Admiral Charles A. Pownall, U.S. Navy, attacked Marcus Island

Petitioner's Exhibit A-1—(Continued)

at dawn on 1 September, 1943, East Longitude Time. The first wave of the attack apparently caught the enemy completely by surprise. It is estimated that the attack, made in several waves throughout the day, destroyed 80 per cent of military installations on the island. Our losses totalled two fighters and one torpedo plane.

Some anti-aircraft fire was encountered by the initial wave, but was eliminated by succeeding attacks. Fires started throughout the island were still burning the day following the attack.

No enemy planes left the ground. Seven twin-motored bombers which were parked on the runway were destroyed by our fighters. Installations destroyed included hangars, fuel and ammunition storage, shops, and living quarters. The two landing strips were severely damaged by heavy bombs. A small tanker caught near the island was sunk by our bombers.

C. W. NIMITZ,

Admiral U.S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 10

November 16, 1942

By far the strongest Japanese attempt to date to recapture Guadalcanal has been completely frustrated by the aggressive action of Vice Admiral W. F. Halsey and his forces in the South Pacific Area.

The enemy transport force was almost annihilated, so that little if any assistance, reached the Japanese land forces on Guadalcanal. Major General A. A. Vandegrift, U.S.M.C. with his Army, Navy and Marine Corps forces continue to have the situation well in hand.

The strong escorting and bombardment forces of the enemy, comprising a large portion of his fleet, were attacked by our surface forces in two heavy night engagements in the vicinity of Guadalcanal. They were also severely damaged by our aircraft, submarines and motor torpedo boats.

As a result all enemy forces were either destroyed or driven back and a major victory was obtained by our gallant forces.

Reports of own and enemy losses have been announced by the Navy Department.

C. W. NIMITZ,

Admiral, U. S. Navy, Com-
mander in Chief, Pacific
Fleet and Pacific Ocean
Areas.

Petitioner's Exhibit A-1—(Continued)

United States Pacific Fleet and

Pacific Ocean Areas

Communique No. 9

15 September 1942

This afternoon our Army Air Forces in Alaska delivered a most successful attack on enemy shipping and shore installations at Kiska.

Enemy ships and planes in the harbor received direct bomb hits and repeated strafing. At least two naval vessels were sunk. Five enemy fighting planes were shot down in flames and one 4-engine patrol plane was burned on the water.

Installations and storage dumps around the harbor were repeatedly bombed and strafed, resulting in large fires and explosions.

Enemy personnel casualties are estimated at around 500 whereas we lost two pilots as a result of two P-38's colliding in midair.

C. W. NINITZ,

Admiral, U.S. Navy, Commander in Chief, U.S. Pacific Fleet and Pacific Ocean Areas.

Petitioner's Exhibit A-1—(Continued).

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 21

(For Release after 1100 (HWT)

Wednesday, 1 December 1943)

Preliminary reports of the Gilbert operations indicate that our landing forces suffered the following approximate casualties:

At Tarawa:

Killed in action.....1,026

Wounded in action.....2,557

At Makin:

Killed in action.....65

Wounded in action.....121

At Apamama:

Killed in action.....1

Wounded in action.....2

— 30 —

United States Pacific Fleet and

Pacific Ocean Areas

Communique No. 7

21 August 1942.

A force of Marines of the U. S. Pacific Fleet made a successful landing on Japanese held Makin Island on August 17th. The purpose of the expedition was to destroy the installations of this enemy

Petitioner's Exhibit A-1—(Continued)

seaplane base. This purpose was accomplished in its entirety and the force has been withdrawn.

Known enemy losses inflicted by the Marines are: at least eighty Japanese killed; radio installation and stores destroyed; one large and one small seaplane destroyed on the water. Other losses were inflicted on the enemy forces by heavy bombing attacks of their own aircraft from other bases, which were attempting to assist them.

The ships of our expedition gunned and sank one small transport and one gunboat.

Considering the nature of this operation, our forces suffered only moderate losses.

The Naval Officer commanding the expedition was Commander John M. Haines, U. S. Navy. The Marines were commanded by Lieutenant Colonel Evans F. Carlson, U. S. Marine Corps Reserve. Second in command of the Marines was Major James Roosevelt, U. S. Marine Corps Reserve. None of these officers was on the casualty list.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Commander in Chief, U.S. Pacific Fleet, and Pacific Ocean Areas.

Petitioner's Exhibit A-1--(Continued)

United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 6

August 8, 1942.

Forces of the United States Pacific Fleet and Pacific Ocean Areas, assisted by units of the Southwest Pacific Area, launched offensive operations in the Tulagi area of the Solomon Islands on August 7th, East Longitude date. These operations are progressing favorably in spite of opposition by enemy land based aircraft and garrisons.

On August 8th, East Longitude date, a task force of the Pacific Fleet bombarded enemy ships and installations in Kiska harbor.

/s/ C. W. NIMITZ,

Admiral, U. S. Navy, Commander-in-Chief, U.S. Pacific Fleet, and Pacific Ocean Areas.

Communique Number 5 Was Never Released
By the Commander in Chief, Pacific Fleet

United States
Pacific Fleet and
Pacific Ocean Areas
Communique Number 4.

June 7, 1942.

The enemy appears to be withdrawing. Contact

Petitioner's Exhibit A-1—(Continued)

was lost during last night. Additional damage was inflicted on two enemy cruisers. Until all reports can be checked, it is impossible to state whether these cruisers are in addition to those reported in Communique #3, or whether they were damaged cruisers included in the previous report. One enemy destroyer was sunk.

One United States destroyer was sunk by a submarine but nearby ships rescued the personnel with small loss of life.

Except for minor submarine activity in the vicinity of the Hawaiian Island Chain, this Section of the Pacific is quiet.

/s/ C. W. NIMITZ

Commander in Chief, U. S.
Pacific Fleet, and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 3

6 June 1942

Through the skill and devotion to duty of their armed forces of all branches in the Midway area our citizens can now rejoice that a momentous victory is in the making.

It was on a Sunday just six months ago that the Japanese made their peacetime attack on our fleet

Petitioner's Exhibit A-1—(Continued)

and army activities on Oahu. At that time they created heavy damage, it is true, but their act aroused the grim determination of our citizenry to avenge such treachery, and it raised, not lowered, the morale of our fighting men.

Pearl Harbor has now been partially avenged. Vengeance will not be complete until Japanese sea power has been reduced to impotence. We have made substantial progress in that direction. Perhaps we will be forgiven if we claim we are about mid-way to our objective!

The battle is not over. All returns have not yet been received. It is with full confidence, however, that for this phase of the action the following enemy losses are claimed; two or three carriers, and all their aircraft, destroyed; in addition one or two carriers badly damaged and most of their aircraft lost; three battleships damaged, at least one badly; four cruisers damaged, two heavily; three transports damaged. It is possible that some of these wounded ships will not be able to reach their bases.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 3 (Continued)

One of our carriers was hit and some planes were lost. Our personnel casualties were light.

This is the balance sheet that the Army, Navy

Petitioner's Exhibit A-1—(Continued)
and Marine forces in this area offer their country
this morning.

C. W. NIMITZ,

Commander-in-Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

United States
Pacific Fleet and
Pacific Ocean Areas
Communique No. 2

June 5, 1942

The Japanese have not followed up their initial air attack on Midway except by a few ineffectual shots from a submarine last night. As more reports come in it appears that the enemy's damage is very heavy indeed, involving several ships in each of the carrier, battleship, cruiser and transport classes. This damage is far out of proportion to that which we have received.

The brunt of the defense to date has fallen upon our aviation personnel in which the Army, Navy and Marine Corps are all represented. They have added another shining page to their record of achievements.

One carrier already damaged by air attack was hit by three torpedoes fired by a submarine.

On every occasion when we have met the enemy our officers and men have been superlative in their

Petitioner's Exhibit A-1—(Continued)

offensive spirit and complete lack of fear. Our country can feel secure with such personnel such as this.

There were reported several instances of the enemy planes machine gunning our aviation personnel who had bailed out in parachutes or were adrift in rubber boats.

While too early to claim a major Japanese disaster it may be conservatively stated that the United States' control remains firm in the Midway area.

United States

Pacific Fleet and

Pacific Ocean Areas

Communique No. 2. (Continued)

The enemy appears to be withdrawing but we are continuing the battle.

C. W. NIMITZ,

Commander - in - Chief, U. S.
Pacific Fleet and Pacific
Ocean Areas.

4 June, 1942.

U. S. Pacific Fleet Communique No. 1.

At 6:35 a.m., Today Midway time, that island was heavily raided by Japanese carrier based planes. The attack was repulsed by the local defenders in which all the armed services are represented. A heavy toll of the attacking planes was taken. Damage to material installations at Midway was reported

Petitioner's Exhibit A-1—(Continued)
as minor. No report of personnel casualties has been received.

The Japanese carriers were accompanied by battleships, cruisers, and destroyers. One battleship and one carrier have been definitely damaged and other vessels are believed to have been hit. Our attacks on the enemy are continuing.

C. W. NIMITZ,

Commander - in - Chief, U. S.
Pacific Fleet, and Com-
mander - in - Chief, Pacific
Ocean Areas.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "B"

Library of Hawaii

ARMY AND NAVY REGISTER

FIGHTING THE JAPS

Gen. Henry H. Arnold, Commanding General, Army Air Forces, on January 17 received from the Poor Richard Club of Philadelphia the Gold Medal of Achievement for 1943, awarded annually by the club. The presentation was made at the Bellevue-Stratford Hotel in Philadelphia during the club's thirty-ninth annual dinner.

In accepting the honor, Gen. Arnold, among other things, said:

“We are fighting, and fighting hard, in theaters

other than Europe—for instance, in the Pacific and Asia against the Japs. These operations against the Japanese have not been secondary. The problems, however, are most difficult and have been entirely different. The European phase of the conflict is approaching its crisis sooner, and geographical conditions made it possible to close grips with that enemy first.

“In the islands of the Pacific there were no adequate airfields waiting for us such as we were able to use in Great Britain. All military activity in the Pacific must be directed toward securing air strips. This transoceanic war has been a slow, tedious, and difficult job, and, while much has been accomplished, we still have a long way to go. The aerial spearheads that we have driven into the periphery of the Japanese empire form an air front that has enabled us to get definite superiority over the enemy. These spearheads no longer knock at the extreme outside, but are reaching farther and farther within the circle and now threaten important Jap strongholds like Rabaul, Truk, and Kavieng.

“The Jap reaction to our penetration has been highly erratic. They have made strong bids to break our supremacy of the skies followed by periods of complete inaction. Jap aircraft have attacked our air bases again and again, disregarding huge losses, and then, changing their policies 100 per cent, have refused battle. They do not seem to have any strategic plan for defense, but rather counterattack haphazardly as if they sensed that nothing they do

can stop the increasing penetration of our aircraft, and—I'll let you in on a secret—nothing can.

“Jap propaganda reflects a similar type of erratic wavering. One day an admiral will say: ‘The people on the home front must not become intoxicated with war victories.’ The following day their radio will state: ‘The war situation manifests a grave and serious aspect.’

“There is good reason for such indecision and worry. Our air strips are constantly drawing the noose tighter around the Japanese empire.

“As with Germany, this job will not be easy. It will be no pushover. Far from it. Because of the distances, the climate, the geography, and the topography, much effort, long, hard hours of labor, intense suffering, heroic bravery, and great ingenuity will be demanded of our men. But we will be equal to the task, no matter how long it takes nor how difficult it is to accomplish.”

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT “C”

ARMY AND NAVY REGISTER

AMERICANS OF JAPANESE DESCENT

Plans have been completed for the reinstitution of general selective service procedures for American citizens of Japanese descent.

Under the War Department plan, Japanese-Americans considered acceptable for military serv-

ice will be reclassified by their Selective Service Boards on the same basis as other citizens and called for induction if physically qualified and not deferred.

Last February the 442d Combat Team, composed of Japanese-American volunteers, was formed. In a letter to the Secretary of War commenting on the formation of this unit, the President said:

"No loyal citizen of the United States should be denied the right to exercise the responsibilities of his citizenship regardless of his ancestry. The principle on which this country was founded and by which it has always been governed is that Americanism is a matter of the mind and heart; Americanism is not, and never was, a matter of race or ancestry."

The excellent showing which the combat team has made in training and the outstanding record achieved by the 100th Battalion (a former Hawaiian National Guard unit) now fighting in Italy were major factors in the adoption of the present plan.

[Endorsed]: Filed May 16, 1944.

PETITIONER'S EXHIBIT "D"

Ready for Jap Fleet

Admiral William F. Halsey, commander in chief in the South Pacific area, this week expressed his conviction that even in the event of a concentration of Japanese sea power for the purpose of one supreme counter-blow the Pacific fleet is able to cope

with the situation. When asked the question at 11 Jan. press conference of the Secretary of the Navy, Admiral Halsey, who is in this country for about ten days, replied: "Decidedly, yes," adding that in the event of such a concentration the enemy could put up a stiff fight. He does, however, consider the Japanese fleet to have been seriously crippled by American forces.

Asked if he considered the enemy base at Truk to be a point which must of necessity be taken, he replied: "I can tell you the only definite place that has got to be taken, and that is Tokyo, and don't let 'em stop until they get there."

He added a warning to the American people against the acceptance of peace offers before this final goal is reached.

Japanese planes, said Admiral Halsey, are as good and possibly better than they ever were but the enemy's pilot material is distinctly on the down grade, many pilots in enlisted grades now being noted in place of the officer pilots employed formerly.

In speaking of the replacement of enemy losses, he stated: "They are carrying on a building program which we hope and believe is not doing too well. I think they have lost a tremendous number of cruisers."

Telling of the crippling of the Japanese supply lines by our air, surface and submarine force, he said: "They go into a place first with shipping, and when they get severely hit they go in with barges. We got some of these with troops on and made good

Japs of them. They next use submarines, and then as a last resort they let them starve."

Telling of the work accomplished by the Seabees, he said: "It just beggars description. Munda airport is today as fine an airport as any you have in the United States."

Urged by Mr. Knox to tell of the part which officers of the Naval Reserve have played in this area, he answered: "We don't think of Regulars and Reserves, they are all Naval officers and are all doing a splendid job. I don't believe that this great country has ever before produced as fine fighting men as we have today."

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "E"

ARMY AND NAVY REGISTER

Washington, D. C., March 4, 1944

Marshall Islands Campaign

Maj. Gen. Willis H. Hale, U. S. A., Commanding General, U. S. Army 7th Air Force, at a press conference on March 1 stated that capture of important Marshall Islands has won from the Japanese the key to the entire central Pacific and advanced by several weeks the time table of our march to Tokyo.

It is just a little over three months since the 7th Air Force aggressively took the air offensive in the central Pacific to prepare for future combined oper-

Petitioner's Exhibit E—(Continued)

ations with sea and ground forces. Prior to that time the 7th was engaged in defense of the Hawaiian Islands from the very serious threat of invasion, in preparing bases from which to operate, in building up its striking strength and in training crews for operations in what we, the vast ocean, and the weather have made the most experienced Japanese pilots believe is the most difficult theater of war in which to maintain sustained air combat.

After December 7, 1941, the imminent threat of invasion of the Hawaiian Islands was not lifted until the Battle of Midway. Then we required bases from which to operate. These were gradually built up 2,000 to 2,400 miles from Oahu in the Phoenix and nearby islands and later in the Ellice group.

These distances are important. Any understanding of the war in the Pacific must be based on an appreciation of distance. Many people in the United States have virtually no conception either of its watery vastness or of air fighting conditions in the central Pacific. The mission of the 7th Air Force, present and future, involves land-based air operations in a theater which extends over some 16,000,000 square miles, or more than five times the size of the United States. The climate is wonderful in much of this weather, but the weather is awful. It is rapidly changing and treacherous, and dependable forecasts are rarely available to the air crews of the 7th Air Force. In operations against the Marshalls, for example, 7th Air Force flyers were faced with a "mov-

Petitioner's Exhibit E—(Continued)

ing front" which sometimes reached an altitude too high to fly over and which often forced the pilots to fly, in a driving storm, a few feet above the water."

Having occupied the Marshalls for more than 20 years, the Japs were fully cognizant of these conditions. This was possibly a major reason why they have not poured so many replacement planes into this area as they have done, despite their continuing heavy losses, into the New Britain-New Guinea sector. There was no use sending very large numbers into the central Pacific, where often their pilots couldn't fly them.

Although we had previously attacked Japanese installations there, the 7th Air Force began its intensive and systematic bombing in the Gilbert campaign on November 13. Our principal targets were Tarawa, Makin, and Abemama, in addition to several supporting bases in the Marshalls.

That campaign is no longer news. There is, however, one comparison between the Gilbert campaign and the Marshalls campaign which is of note: The 7th Air Force bombed the Marshalls for 70 days prior to the landing, while the Gilberts were systematically bombed for only one week.

Japanese Homeland to Be Bombed

One of the objectives of the air war in the Pacific is to secure a chain of bases which will put the Japanese homeland within effective range of our heavy bombers. The Marshalls operation was a long step in carrying out that plan.

Petitioner's Exhibit E—(Continued)

The mission of the 7th Air Force in the preparation for and during the actual invasion of the Marshalls was to deny to the Japs the use of their air power and thereby remove the awful hazard faced by any invasion fleet that a determined attack by land-based enemy aircraft may seriously cripple major fleet units. So successful was the 7th in the performance of this mission that the extensive naval forces participating in the assault and occupations of Kwajalein and Majuro—the largest ever assembled in the Pacific—were not at any time—before, during or after—attacked by as much as a single hostile aircraft.

On one island where the Japanese brought in replacement planes, the 7th bombed out the radar station. It was therefore possible for carrier-based planes to attack that island with complete surprise and to knock out in one blow the entire Japanese force of some 60 airplanes.

The question has been asked, Would it have been possible to make another Pantelleria out of the Marshalls operation? It was not sufficient to render useless the Marshall Islands to the Japanese, as they were needed by our air forces for air bases. The 7th Air Force was, however, well on its way to accomplish the neutralization of the five principal Jap bases in the Marshalls as early as two weeks before the occupation. (By neutralization is meant denying the enemy the intended use of a base.) At that time two of the important islands were 80 per cent

Petitioner's Exhibit E—(Continued)

neutralized, one was 60 per cent, one 50 per cent, and one 20 per cent. By the time of the assault the "neutralization" had proceeded much further, but it can never be complete unless the enemy abandons the air base, a practice for which the Japs are not particularly noteworthy. However, due to attacks from the air, the Marshalls had ceased to exist as a formidable bastion in the Jap outer perimeter of defense.

The 7th Air Force, by its day and night bombing of all major Japanese installations in the Marshalls—with Liberators, Mitchells, Dauntless, P-40 Warhawks, everything we had with wings on it which could carry a bomb—to a large degree helped to render impotent the extensive ground defense installations which the Japs had developed on several of the islands and on which they had confidently counted successfully to defend those islands.

Due in part to the impartiality of our bombings, the Japs didn't know where to expect the Marshalls assault. Reports from our aircraft showed that they were redistributing their forces prior to the time of the invasion and in anticipation of it; but they were out-smarted.

In addition to its operation in preparation for the Marshalls occupation, the 7th also supported the assault by successfully dropping 2,000-pound "atoll busters" on Jap gun emplacements defending Kwajalein and by unremitting attacks on other Jap islands which rendered them useless as supporting bases in the defense of Kwajalein and Majuro.

Petitioner's Exhibit E—(Continued)

In the Marshalls operation the 7th Air Force destroyed or probably destroyed some 21 enemy naval or cargo vessels and damaged, in many cases seriously, at least 29 more.

In the Marshalls campaign from 80 per cent to 92 per cent, depending on the type of plane involved, of all bombs dropped by the 7th Air Force hit the target at which they were aimed. This record is as great a tribute to the excellence of the Norden bomb sight as it is to the skill of the 7th Air Force air crews. We use the Norden bomb sight exclusively in our heavy bombers.

The adaptation of the 75-mm. cannon in the Mitchell bomber to the requirements of the central Pacific theater was an interesting aspect of the Marshalls campaign. Used experimentally elsewhere, this was the first time it played an important role in a specific operation. This cannon proved to be a highly formidable weapon with a surprising degree of accuracy. It was used with good results against shipping, but particularly the "flying cannon" served to neutralize Jap ack-ack and automatic weapons fire which had taken a heavy toll of our Mitchell bombers in their minimum-altitude attacks against Jap island installations.

The Mitchells, flashing in just skimming the water at more than 250 miles an hour, presented a point-blank target. But with the "flying cannon" the Mitchells were able to drive the Jap gun crews from their weapons and in many cases to destroy the weapons themselves. In the approach to the target one

Petitioner's Exhibit E—(Continued)

plane could get off as many as 10 shells. With such fire power even a small formation of Mitchells could lay down a considerable artillery barrage. The Japs could not stand up to it. This use of this cannon in the Mitchell does not in any way impair the bomb load, the speed, or the range of the aircraft.

As a medium and heavy bomber team the Mitchell-Liberator combination is proving itself beyond our greatest expectations practically every day in the Pacific. The planes fly, shot up, through weather so turbulent it threatens to pull them apart. Almost never do they have fighter protection; the distances are too great. Frequently they must fight their way into and out from a target. Sometimes they get blasted full of holes; sometimes they get motors shot out, but just about always, if the wings stay on, they get home. The men and women who are building these airplanes deserve great credit.

The Marshall campaign provided the Japs with a handwriting on the wall—or a handwriting in the sky—which must be legible to all of them. The pattern for the future—at least so far as the Air Force is concerned—will be to render ineffectual every island group which stands between us and the Japanese homeland. The 7th Air Force is already blasting at the Carolines. Anyone who wants to know where it is going from there need only look at the map.

These operations are largely concerned with securing air bases, but they are in no sense "island hopping," a term which has been used largely to in-

Petitioner's Exhibit E—(Continued)

dicate a tortuously slow approach to Japan. Through combined operations with the Navy and the marines, we are advancing by leaps and bounds. The 7th Air Force commenced its bombing of the Gilberts on November 13 from bases roughly 4000 miles from Tokyo. About 85 days later we were set in the Marshalls, and our bases there are about 2,500 miles from Tokyo. Thus was gained 1,500 miles, an average of more than 17 miles a day.

Those Who Fight

Before summarizing the Marshalls campaign a few further remarks about the 7th Air Force and the men in the Air Forces seem appropriate. The men who fight the air war over the Pacific carry on as tough a battle as is being waged anywhere in the world. They don't live in comfortable buildings; they sleep on canvas cots in tents and under mosquito netting. Their showers are gasoline drums with a nozzle, and they wash and brush their teeth and shave in tin hats. They are 2,400 miles from the nearest American community, the nearest dance, the nearest normal social life. If they are shot down or disabled over the target they face what to them is the stark horror of capture. If they go down in the ocean their chances of rescue, despite the vigilant Navy rescue service, are problematical. Yet they must fly constantly. During January every bomber in the 7th Air Force forward echelon averaged six missions. Considering the distance traveled; that is, in my opinion, more flying per airplane than in any other theater in the war.

Petitioner's Exhibit E—(Continued)

Because of conditions, the 7th Air Force has had to become a versatile air force. Bombers are used occasionally as fighters, and fighters are regularly used as bombers.

The fastest P-39 in the Pacific is a night fighter built by 7th Air Force engineers from a reclaimed fuselage and spare parts. Heavy bombers of the 7th Air Force constantly have to land and take off from strips which any rule book will say are impossibly short for a B-24.

The 7th developed its convoy system for ferrying fighters over long distances in which the fighters fly formation on a B-24, which does the navigating, a hazardous but necessary undertaking because of weather. The 7th has developed its own transition training schools, as every crew member must have a postgraduate course before he is qualified to fly in the central Pacific.

The 7th Air Force is operating bombing missions longer than those in any other theater. The longest was 2,769 miles, and the average is more than four times the distance from London to Berlin. All flights cover great water distances with no intermediate landings. The usual checkpoints, such as rivers, mountains, and railroads, are nonexistent.

The navigation must be perfect. Targets are pin points on islands which themselves may be smaller than the factory area of some prime targets in Germany. It isn't enough that they hit the island; they must hit the target. Seventh Air Force bombardiers must be able to get hits from an altitude of 12,000

Petitioner's Exhibit E—(Continued)

feet, an average of less than 250 feet from the center of the aiming point. This is doubtless the most consistently accurate bombing being done anywhere in the world.

In a mission over Rongelap Liberator bombers were assigned the job of knocking out a radio station in a building only 35 feet by 125 feet. The ships went in at 3,500 feet, made a perfect run and dropped their bombs squarely in the middle of the building. They used 100-pound bombs, relying on accuracy not on tremendous concussion.

Salient Features of the Campaign

1. In losing the Marshalls the Japs received a great strategic setback. Tarawa was the key to the Marshalls, but the Marshalls provided the key to the entire central Pacific.

2. In the Marshalls was proved a perfected model of combined operations so successful that we have been enabled materially to put ahead our Pacific time table.

3. The basic reason for the excellent success in the use of land-based aircraft in this combined operation is the fact that the 7th Air Force was utilized, as airpower always should be, as a complete unit with an assigned mission. One of the important lessons of the Marshalls campaign is the proved facility with which the land-based aircraft of an Army air force can support and cooperate with the Navy and amphibious forces, in combined operations.

Petitioner's Exhibit E—(Continued)

4. The value of strategic bombing in the central Pacific was demonstrated in the Marshalls. In the march across the Pacific land-based airpower will have the dual function proved in the Marshalls of neutralizing the enemy air forces and preparing Jap-held islands so that they can be more successfully attacked by Navy surface vessels and carrier-borne aircraft and stormed by infantry at a minimum of casualties.

5. While the Marshalls campaign, under the brilliant and meticulous leadership of Admiral Nimitz, conclusively demonstrated that properly employed heavy land-based aircraft are a vital factor in operations ahead, this campaign also revealed outstanding evidence of the unexcelled training and equipment of our Army Ground forces in amphibious assault operations, along with our incomparable marines. These, coupled with the unveiling of the devastating power of the guns of our expanded Navy, constitute the first really terrifying threat Japan has ever known.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "F"

SUPREME COURT

	1939	1940	1941	1942	1943	1939 to 1943
Civil	31	35	9	13	20	108
Criminal	4	6	1	7	4	22
Total	35	41	10	20	24	130

CIRCUIT COURTS

Civil, other than probate	2097	2119	2095	2243	2581	11135
Probate	1751	1946	2445	2172	1057	9371
Criminal	789	666	501	156	557	2669
				[In pencil]: 4		22
Juvenile & Bastardy	970	1203	1241	945	1175	5533
Total	5607	5933	6282	5516	5370	28708
Grand Total	5642	5974	6292	5536	5394	28838

(Testimony of Gustaf K. Sproat.)

Petitioner's Exhibit F—(Continued)

	FIRST CIRCUIT					SECOND CIRCUIT					THIRD CIRCUIT					FOURTH CIRCUIT				
	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
Law	286	444	333	129	137	21	12	31	7	6			2	1	17	34	41	28	33	
Equity	511	272	86	45	46	2	6	8	5	3	3				10	9	10	12	4	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Divorce	111	1056	1297	1763	1945	110	85	102	98	97	19	16	22	29	117	72	80	48	75	
Special proceedings	2	7	21		3						37				37	22	38	41	8	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile	654	759	839	627	725	67	84	89	73	98	26	33	12	65	245	126	182	168	78	
Bastardy	30	38	39	48	17	14	9	6	3	7			1		4	2	5	2		
Totals	4324	4579	4876	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	
Civil	1710	1779	1737	1937	2131	133	103	141	110	106	44	16	24	30	181	137	169	129	120	
Probate	1251	1493	1918	1617	418	253	237	218	222	269	40	37	20	26	295	169	151	211	287	
Criminal	679	510	343	107	420	55	69	83	25	66		3	8	8	50	35	40	36	11	
Juvenile & Bastardy	684	797	878	675	742	81	93	95	76	105	26	33	13	65	249	128	187	170	78	
	4324	4579	4876	4336	3711	522	502	537	433	546	110	89	65	129	775	469	547	546	496	

[Endorsed]: Filed 4-20-44.

Petitioner's Exhibit F—(Continued)

	SECOND CIRCUIT					THIRD CIRCUIT					FOURTH CIRCUIT					FIFTH CIRCUIT					TOTALS				
	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943	1939	1940	1941	1942	1943
21	12	31	7	6				2	1	17	34	41	28	33		10	7	5		25	351	504	399	170	185
2	6	8	5	3		3				10	9	10	12	4		3	1	3		9	528	289	109	54	62
253	237	218	222	269		40	37	20	26	295	169	151	211	287		38	28	78	20	75	1751	1946	2445	2172	1057
110	85	102	98	97		19	16	22	29	117	72	80	48	75		40	30	36	45	70	1152	1267	1505	2010	2229
						22				37	22	38	41	8		20	14	20	1	65	66	59	82	9	105
55	69	83	25	66			3	8	8	50	35	40	36	11		20	44	31	5	21	789	666	501	156	557
67	84	89	73	98		26	33	12	65	245	126	182	168	78		47	86	82	50	75	920	1144	1190	893	1143
14	9	6	3	7				1		4	2	5	2			4	6	3	1	4	50	58	51	52	32
522	502	537	433	546		110	89	65	129	775	469	547	546	496		182	216	258	122	338	5607	5933	6282	5516	5370
133	103	141	110	106		44	16	24	30	181	137	169	129	120		73	52	64	46	163	2097	2119	2095	2243	2581
253	237	218	222	269		40	37	20	26	295	169	151	211	287		38	28	78	20	75	1751	1946	2445	2172	1057
55	69	83	25	66			3	8	8	50	35	40	36	11		20	44	31	5	21	789	666	501	156	557
81	93	95	76	105		26	33	13	65	249	128	187	170	78		51	92	85	51	79	970	1262	1241	945	1175
522	502	537	433	546		110	89	65	129	775	469	547	546	496		182	216	258	122	338	5607	5933	6282	5516	5370

PETITIONER'S EXHIBIT G-1

(Copy)

GALEN M. FISHER

11 El Sueno, Orinda, Calif.

April 30, 1943

Mr. Charles F. Loomis

P. O. Box 459

Honolulu, Hawaii

Dear Loomis:

Recently the following statements have been made in southern California and it is important that we be able to deny them, if they are false or partly so.

1. The movie, "Air Force," states that on December 7th Japanese trucks in Honolulu deliberately put out of commission several American air planes.
2. On December 7th American machine gunners cleared Honolulu streets of Japanese.
3. All over Honolulu were signs which read, "Here a Japanese traitor was killed."
4. The Government has prevented the Mainland from getting all the damaging facts as to Japanese sabotage, etc.
5. The Japanese military attacking force bombed Oahu on December 8 and 9, as well as on December 7, 1941.
6. One civilian from Honolulu told a Los Angeles clergyman that his truck had been used for about a week after December 7th for picking up dynamite planted by the Japanese traitors.

I know that the statements in the Tolan Report and by Edgar Hoover and by Blake Clark have stated or implied the falsity of some of these statements, but I should appreciate having your up-to-date reply.

Despite the execution of the American aviators and the statements made by General DeWitt to the House Committee here, the tide is slowly moving in the right direction, I believe.

Faithfully yours,

GALEN M. FISHER.

[Endorsed] Filed 4-20-44.

PETITIONER'S EXHIBIT G-2

(Copy)

POLICE DEPARTMENT

City and County of Honolulu

Honolulu, Hawaii

May 12, 1943

Memo to Mr. Charles F. Loomis:

Relative to the letter of Mr. Galen M. Fisher, addressed to you under date of April 30, I wish to comment with reference to the six statements which he submitted, as follows:

1. The statement that Japanese trucks in Honolulu deliberately put out of commission several American air planes is an absolute lie. The Military and Naval Intelligence services and the F.B.I. can verify that there were no Japanese trucks on

any airfield, nor did any such trucks do any damage in Honolulu on December 7th.

2. There was no congregation of any crowds, and the Army, Navy or Marine Corps was not called on to preserve order in the city. No American machine gunners cleared Honolulu streets of any Japanese before, on or after December 7th.

3. The statement that all over Honolulu had signs which read, "Here a Japanese traitor was killed," is another absolute lie.

4. There was not one act of sabotage attempted by any Japanese or any other person during December 7th or thereafter.

5. The Japanese bombed Oahu twice: on December 7, 1941, and sometime during the latter part of 1942, when four bombs were dropped in the hills back of the city.

6. There was no dynamite planted by any Japanese or anyone else in or about Honolulu in December; and no civilian ever used a truck to pick up any dynamite.

While no acts of sabotage were committed, the Japanese did maintain an excellent system of espionage.

(signature)

W. A. GABRIELSON

Chief of Police

WAG:DL

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT G-3

(Copy)

HEADQUARTERS HAWAIIAN
DEPARTMENTOffice of the Assistant Chief of Staff
for Military Intelligence

Ref. no.

17 May 1943

312.11 PR/ID

Mr. Charles F. Loomis

P. O. Box 450

Honolulu, T. H.

Dear Mr. Loomis:

I was surprised to learn that some of the many Island rumors about the Hawaiian Islands during the first few days of the war are still prevalent on the mainland. They have been repeatedly denied by all authorities.

In connection with the six statements that Mr. Fisher enumerated in a letter to you, it can be positively stated that all are untrue. It is hardly worthwhile to refute them individually but it might be of interest for you to know that the movie, "Air Force," was censored and the scenes about the misuse of the Japanese trucks and the Japanese snipers on Maui were deleted before the picture was permitted to be shown in Hawaii.

Having been in charge of military intelligence activities since June 1941, I am in position to know what has happened. There have been no known acts of sabotage, espionage or fifth column activities

committed by the Japanese in Hawaii either on or
subsequent to December 7, 1941.

Sincerely yours,

(signature)

KENDALL J. FIELDER

Colonel, G.S.C.

A.C. of S., G-2

[Endorsed]: Filed 4-20-41.

PETITIONER'S EXHIBIT "H"

[Letterhead of]

Bishop Insurance Agency, Ltd.

Honolulu, Hawaii, U.S.A.

April 4, 1944

J. Garner Anthony Esq.

c/o Robertson, Castle & Anthony

312 Castle & Cooke Bldg.

Honolulu, T. H.

Dear Sir:

Re: War Risk Rates

In reply to your inquiry, the following are the War Risk rates charged by Marine Insurance Companies on merchandise from the Pacific Coast to Honolulu for the periods mentioned:

• From Oct. 5th, 1941 to Dec. 12th, 1941.....	.05
Dec. 8th, 1941 to Dec. 9th, 1941.....	4.00
Dec. 10th, 1941 to Dec. 23rd, 1941.....	5.00
Dec. 24th, 1941 to Jan. 21st, 1942.....	2.50
Jan. 22nd, 1942 to May 13th, 1942.....	1.50
May 14th, 1942 to June 3rd, 1942.....	2.00
June 4th, 1942 to June 10th, 1942.....	1.50
June 11th, 1942 to Dec. 3rd, 1942.....	2.50
Dec. 4th, 1942 to Jan. 6th, 1943.....	2.00
Jan. 7th, 1943 to May 16th, 1943.....	1.50
May 17th, 1943 to June 30th, 1943.....	1.00
July 1st, 1943 to Aug. 1st, 1943.....	.87½
Aug. 2nd, 1943 to Dec. 8th, 1943.....	.75
Dec. 9th, 1943.....	.50

Yours very truly,

RALPH C. SCOTT

Ralph C. Scott

Vice-Pres. & Manager

RCS:W

[Endorsed]: Filed 4-20-44.

COMPARATIVE STATEMENT OF GROSS INCOME AND CONSUMPTION TAX COLLECTIONS
AND THE TAX BASE FOR THE CALENDAR YEARS 1941 - 1942 - 1943

Business Activities	1941	1942	1943	1941	1942	1943	1941 — 1943 Comparison	
	Tax	Tax	Tax	Base	Base	Base	Increase Tax	or Decrease Base
Retailing	2,853,845.42	3,832,233.65	5,003,503.27	190,256,170.98	255,481,987.83	333,566,551.08	2,149,657.85	143,310,380.10
Sugar Processing	790,311.55	776,354.30	973,210.01	52,687,384.14	51,756,901.57	64,880,602.43	182,898.46	12,193,218.29
Pineapple Canning	755,902.08	632,356.10	664,461.03	50,393,421.60	42,157,031.16	44,297,357.67	91,441.05*	6,096,063.93*
Other Canning	41,438.16	5,437.98	1,855.99	2,762,541.25	362,531.65	123,732.53	89,582.17*	2,638,808.72*
Producing	22,939.10	23,371.59	41,597.77	9,175,640.00	9,348,636.00	16,639,108.00	18,658.67	7,463,468.00
Wholesaling	319,634.06	360,927.25	445,296.29	127,853,624.00	144,370,900.00	178,118,516.00	125,662.23	50,264,892.00
Certain Manufacturing	58,777.68	60,559.18	61,676.06	23,511,072.00	24,223,672.00	24,670,424.00	2,898.38	1,159,352.00
Printing & Publishing	49,519.05	72,795.98	58,074.35	3,301,266.54	4,853,060.47	3,871,619.45	8,555.30	570,352.91
Services	276,173.93	374,599.43	455,246.14	18,411,577.02	24,973,270.39	30,349,712.30	179,072.21	11,938,135.28
Professional Services	108,272.06	127,723.64	165,915.42	7,218,129.82	8,514,900.86	11,061,016.95	57,643.36	3,842,887.13
Contracting	370,994.85	1,985,017.01	1,282,864.22	24,732,965.12	132,334,335.02	85,524,195.80	911,869.37	60,791,230.68
Thea. Amuse. & Radio	186,584.72	110,910.84	184,652.64	7,105,641.51	7,394,048.60	12,310,163.70	78,067.92	5,204,522.19
Interest	53,301.21	44,498.34	39,499.45	3,553,410.23	2,966,553.05	2,633,294.00	13,801.76*	920,116.23*
Commissions	143,097.79	142,346.12	182,770.27	9,539,842.74	9,489,731.85	12,184,672.49	39,672.48	2,644,829.15
Rentals	367,489.23	428,121.19	491,181.35	24,499,257.35	28,541,384.11	32,745,390.61	123,692.12	8,246,133.26
All Other Income	127,333.67	166,324.24	199,329.94	8,488,903.06	11,088,271.57	13,288,649.38	71,996.27	4,799,746.32
Consumption Tax	233,599.98	154,727.97	141,917.70	15,573,316.71	10,315,187.70	9,461,170.51	91,682.28*	6,112,146.20
Sub Totals	6,679,214.54	9,298,304.81	10,393,051.90	579,064,164.07	768,172,403.83	875,726,176.90	3,713,837.36	296,662,012.83
Penalties	2,583.10	2,225.66	2,470.79				112.31*	
Totals	6,681,797.64	9,300,530.47	10,395,522.69	579,064,164.07	768,172,403.83	875,726,176.90	3,713,725.05	296,662,012.83
License Fees	29,929.00	30,082.00	33,308.00				3,379.00	
Grand Totals	6,711,726.64	9,330,612.47	10,428,830.69	579,064,164.07	768,172,403.83	875,726,176.90	3,717,104.05	296,662,012.83

* Figures circled in pencil.

OTHER COMPARATIVE DATA

Grand Totals, For The Cal- endar Years			OTHER COMPARATIVE DATA					
	Tax	Base		1st Div.	2nd Div.	3rd Div.	4th Div.	Territorial
1936	3,550,538.58	353,697,498.49	1943 Collections	9,333,565.50	278,068.37	610,692.94	206,503.88	10,428,830.69
1937	3,639,972.97	394,090,226.23	1940 Collections	4,416,856.46	179,912.94	409,094.24	130,014.64	5,135,878.28
1938	3,689,379.29	373,956,139.05	Increase	4,916,709.04	98,155.43	201,598.70	76,489.24	5,292,952.41
1939	4,247,863.40	394,806,253.64	Increase Percentages	111.3%	54.5%	49.2%	58.8%	103%
1940	5,135,878.28	433,906,898.71						

Tax Commissioner's Office
January 15, 1944

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-1"

[Stamped]: Jan 1 1943

Gen. Emmons Views Future With Confidence
By Lt. Gen. Delos C. Emmons, Military Governor
and Commander of the Hawaiian Department

During the year which is now drawing to a close, all members of the armed forces—army, navy, marine corps and coast guard—and all elements of the civilian population have applied themselves industriously and wholeheartedly toward attaining the military security and safety of these islands.

The work has been difficult and has required the closest cooperation and coordination of all people here.

As we review the accomplishments of the year, it must be obvious to all that remarkable results have been accomplished.

By reason of the work which has been done, we are entitled to look forward with confidence and reassurance to the future.

I congratulate the people of the territory of Hawaii and all members of the armed services upon the zeal and spirit which they have displayed, and I take this occasion to extend to the entire population of the Territory my sincere and cordial greetings for the New Year, and to express the wish that they may continue in the future along the path they have so well outlined in the past.—Star-Bulletin.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-2"

[Stamped]: Jul 5 1943

Gen. Richardson Pays High Tribute
By Lt. Gen. Robert C. Richardson, Jr., Command-
ing General, Hawaiian Department

I am honored to have the opportunity of paying tribute today to the wardens' division of the office of civilian defense.

All the citizens of this territory share with me a deep pride in your organization.

Ever watchful over the skies, every ready to fight incendiary bombs and fires, trained for defense against poison gas and in the use of chemicals, you are in reality just as much on a wartime basis as our soldiers, our sailors and our marines.

In case of an attack, on these islands, which is always a possibility, you will be obliged to serve under fire, when your efficiency and courage will be put to the test.

* * *

Today is the second birthday of your organization, which started in a very small way with the formation of a fire wardens' committee of the municipal major disaster council.

After Pearl Harbor the committee grew rapidly, suffered all the pangs of reorganization, and finally emerged as a defense unit of which any city might well be proud.

You comprise an able, efficient and patriotic group of citizens upon whom the territory must depend if attacked.

* * *

We should indeed be very thankful and grateful that time has permitted us to organize so formidably against attack, but one is never so well prepared that he can permit himself to rest on his oars and in the case of the Hawaiian islands we can not overlook the capabilities of our enemy, the Japanese, to strike at us again.

They are an astute, resourceful and relentless foe, and therefore we must never for one instant relax our alertness, nor our preoccupation with our defense.

Meanwhile, we are training our troops in offensive warfare as well as in defensive tactics.

I count upon you to uphold your present high standards because with your aid and with the aid of people like you who serve so willingly, so silently, and without ostentation, America can not fail to win this war.—Star-Bulletin.

[Endorsed]: Filed 4-20-44.

PETITIONER'S EXHIBIT "J-3"

[Stamped]: Jun 7 1943

Richardson Pays Tribute to Army-Navy-
Civilian Unity

Star-Bulletin June 5, 1943

The text of his address follows:

"As I assume command of the Hawaiian Department I am impressed by the great development which has been accomplished in this area in the past 17 months.

"Under the able leadership of my predecessor, Lt. Gen. Delos C. Emmons, the Hawaiian islands have been transformed into a strongly organized outpost for the defense of the Western Hemisphere.

"This group of islands is now in a position to take care of any enemy who would be so rash as to attack it.

"The Hawaiian group is on guard, so to speak, for the entire Pacific coast of the United States, Canada, and our sister republics to the south, and as the war against the Japanese progresses these islands will be the base of the offensive drive against Japan.

Here Many Times

"It has been my good fortune to visit Hawaii many times during my service as an officer in the past 38 years, en route to and from the Philippines and more recently while on a mission a year ago throughout the South Pacific and Australia.

"The measures which have been taken in the past year to strengthen the defenses of these islands make of these islands a vastly different Hawaii today.

"Outwardly the change is not so noticeable, because nature—which has always been kind and generous to the islands—furnishes their best camouflage; but inwardly there has been a moral and spiritual change in the life of the people, who no longer take life in the Pacific for granted, but are acutely alert to their dangers and to their responsibilities.

"There is unusual unity between the civil population and the armed forces, both of which standing together are ready for any test to which they may be put. To the people at home, as well as to our fighting comrades all over the world I am glad to report from my new command that the state of the defenses of this outpost and of the training of the troops is good.

Civilian Workers Lauded

"It is gratifying and inspiring to feel the intenseness of purpose displayed by our civilian war workers and by our soldiers in maintaining themselves in a state of readiness.

"There have been many necessary restrictions imposed on military and civilian personnel alike that have effected great changes in the daily lives of every man, woman and child on the islands; but these restrictions have been accepted in the finest spirit of cooperation, as everyone realizes that no chances can be taken in the defenses of Hawaii.

"The army, the navy, the marines and the coast guard are as one, and hand in hand with the civil government have created an atmosphere that is charged with an eagerness to get on with the war. There is a complete absence of complacency and a corresponding state of high morale.

Ideal Training Ground

"With their varied terrain, the Hawaiian islands offer an ideal place for extensive training in jungle and amphibious warfare and, taking advantage of those natural facilities, an intensive training in these types of warfare is in progress.

"Hawaii is the key to the Pacific and the key to the defenses of the western coast of the United States. There is certainly no doubt that Hawaii is one of the main approaches which our president declared will lead to Tokyo.

"Passing through here will be an ever increasing number of troops and an ever increasing amount of the machinery of war, all directed toward the very heart of the empire of Japan.

"On this day—the anniversary of the Battle of Midway—although we are much stronger than we were at that time, we are even more alert than ever.

"This anniversary will recall to every American the sacrifices which have been made by our gallant comrades of the army, navy, marine corps and merchant marine who gave their lives for our country not only at Midway but in Guadalcanal, Tulagi, New Guinea, the Bismarck sea, Darwin, Africa, and Tunisia, and throughout the world.

"Our responsibility to these men is great. We will carry on to keep their memories alive for all time to come, and that they may know that their comrades who are left behind will never let them down."

[Endorsed]: Filed 4-20-44.